

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

September 15, 2022
10:15 a.m.

- *90 Church Street, Conference Rooms 4 A/B, NYC*

- *Empire State Plaza, Concourse Level, Meeting Rooms 2-4, Albany*

I. SPECIAL COMMITTEE ON CODES, REGULATIONS, AND LEGISLATION

Thomas Holt, Chair

For Emergency Adoption

20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR
(Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements)

20-24 Addition of Sections 1.2, 700.5 and Part 360 to Title 10 NYCRR; Amendment of
Sections 400.1, 405.24 & 1001.6 of Title 10 NYCRR and Sections 487.3, 488.3 and
490.3 of Title 18 NYCRR (Surge and Flex Health Coordination System)

For Adoption

21-06 Addition of Subpart 66-4 to Title 10 NYCRR
(COVID-19 Vaccinations of Nursing Home and Adult Care Facility
Residents and Personnel)

II. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Gary Kalkut, M.D., Vice Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services - Construction

Exhibit # 1

<u>Number</u>	<u>Applicant/Facility</u>
1. 221218 C	United Memorial Medical Center (Genesee County)

B. Applications for Establishment and Construction of Health Care Facilities/Agencies

Ambulatory Surgery Centers- Establish and Construct

Exhibit # 2

<u>Number</u>	<u>Applicant/Facility</u>
1. 211143 E	AMSC, LLC d/b/a Downtown Bronx ASC (Bronx County)
2. 221095 B	Empire CSS, LLC d/b/a Empire Center for Special Surgery (Richmond County)
3. 221224 E	21 Reade Place ASC, LLC d/b/a Bridgeview Endoscopy (Dutchess County)
4. 221267 E	Advanced Endoscopy LLC d/b/a Advanced Endoscopy Center (Bronx County)
5. 221268 E	Carnegie Hill Endoscopy, LLC (New York County)
6. 221269 E	East Side Endoscopy, LLC d/b/a East Side Endoscopy and Pain Management Center (New York County)
7. 221270 E	Endoscopy Center of Niagara, LLC (Niagara County)
8. 221271 E	Endoscopy Center of Western New York, LLC (Erie County)
9. 221272 E	Island Digestive Health Center (Suffolk County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 3

<u>Number</u>	<u>Applicant/Facility</u>
1. 221199 B	Yaldeinu Health Inc. (Kings County)
2. 221212 E	Smile New York Outreach, LLC (Bronx County)

Certified Home Health Agencies - Establish/Construct

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 221184 E	Emerest Certified Home Health Care of NY LLC d/b/a Royal Care Certified Home Health Care of NY (Bronx County)

D. Certificates

Exhibit # 5

Certificate of Dissolution

Applicant

J.G.B. Health Facilities Corporation

Pursuant to the authority vested in the Commissioner of Health by Section 2803 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by amending sections 405.11 and 415.19, to be effective upon filing with the Secretary of State, to read as follows:

Section 405.11 is amended by adding a new subdivision (g) as follows:

(g) (1) The hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 550;

(ii) for gowns, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 41;

(iii) for surgical masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 21; and

(iv) for N95 respirator masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 9.6.

(3) The Commissioner shall have discretion to increase the stockpile requirement set forth in paragraph (1) of this subdivision from 60 days to 90 days where there is a State or local public

health emergency declared pursuant to Section 24 or 28 of the Executive Law. Hospitals shall possess and maintain the necessary 90-day stockpile of PPE by the deadline set forth by the Commissioner.

(4) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers and inventory should be rotated through regular usage and replace what has been used in order to ensure a consistent readiness level, and expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(5) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the hospital's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the hospital with a fourteen day grace period, solely for a hospital's first violation of this section, to achieve compliance with the requirement set forth herein.

Section 415.19 is amended by adding a new subdivision (f) as follows:

(f) (1) The nursing home shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 24;

(ii) for gowns, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 3;

(iii) for surgical masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.5;
and

(iv) for N95 respirator masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.4.

(v) For the purposes of this paragraph, the term "applicable positivity rate" shall mean the greater of the following positivity rates:

(a) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period April 26, 2020 through May 20, 2020; or

(b) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period January 3, 2021 through January 31, 2021; or

(c) 20.15 percent, representing the highest Regional Economic Development Council average COVID-19 positivity rate, as reported to the Department, during the periods April 26, 2020 through May 20, 2020 and January 3, 2021 through January 31, 2021.

(3) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers and inventory should be rotated through regular usage and replace what has been used in order to ensure a consistent readiness

level, and expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(4) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the nursing home's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the nursing home with a fourteen day grace period, solely for a nursing home's first violation of this section, to achieve compliance with the requirement set forth herein.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803 of the Public Health Law (PHL) authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities, including hospitals and nursing homes.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout

the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the

Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a general hospital or nursing home, in which case costs will be the same as costs for private entities.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no addition paperwork.

Local Government Mandates:

General hospitals and nursing homes operated by local governments will be affected and will be subject to the same requirements as any other general hospital licensed under PHL Article 28.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that general hospitals and nursing homes have adequate stockpiles of PPE necessary to protect hospital staff from communicable diseases, compared to any alternate course of action.

Federal Standards:

No federal standards apply to stockpiling of such equipment at hospitals.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State. These regulations are expected to be proposed for permanent adoption at a future meeting of the Public Health and Health Planning Council.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a general hospital or a nursing home. Currently there are five general hospitals in New York that employ less than 100 staff and qualify as small businesses, and there are 79 nursing homes in New York qualify as small businesses given that they employ less than 100 staff.

Compliance Requirements:

These regulations require all general hospitals and nursing homes to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each covered facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to

balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes.

Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Small Business and Local Government Participation:

Small business and local governments were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department

plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking on these regulations and opportunity to submit public comments.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County

Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

There are 47 general hospitals located in rural areas as well as several licensed nursing homes.

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services:

These regulations require all general hospitals and nursing homes, including those in rural areas, to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as

part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes.

Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Rural Area Participation:

Parties representing rural areas were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking and opportunity to submit public comments.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

EMERGENCY JUSTIFICATION

These regulations are needed on an emergency basis to ensure hospital and nursing home staff, as well as the patients and residents for whom they provide care, are adequately protected during the 2019 Coronavirus (COVID-19) or another communicable disease outbreak. These regulations are specifically meant to address the lessons learned in New York State from 2020 to 2021 during the COVID-19 pandemic with respect to PPE. As stated in the declaration of the State disaster emergency in Executive Orders No. 11 through 11.9 (November 26, 2021, through September 12, 2022; see 9 NYCRR §§ 9.11 through 9.11.9), New York continues to experience high rates of COVID-19 transmission. A possible resurgence of COVID-19 or another communicable disease outbreak necessitates that hospitals and nursing homes continue to have an adequate supply of PPE.

New York State first identified COVID-19 cases on March 1, 2020 and thereafter became the national epicenter of the outbreak. However, as a result of global PPE shortages, many hospitals and nursing homes in New York State had difficulty obtaining adequate PPE necessary to care for their patients and residents. New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak.

These regulations are needed on an emergency basis to ensure that hospitals and nursing homes Statewide do not again find themselves in need of PPE from the State's stockpile should another communicable disease outbreak occur, COVID-19 or otherwise. It is critically important that PPE, including masks, gloves, respirators, face shields and gowns, is readily available and used when needed, as hospital and nursing home staff must don all required PPE to safely

provide care for patients and residents with communicable diseases, while ensuring that they themselves do not become infected with a communicable disease.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a resurgence of COVID-19 or another communicable disease outbreak.

Of note, a Notice of Proposed Rule Making was published in the *State Register* on June 8, 2022, with a public comment period that ended on August 8, 2022. The Department intends these emergency regulations to be in effect only until such time as the Department can fully review the public comments received, determine whether any amendments to the rule are necessary based on such comments, publish an Assessment of Public Comment and adopt a Final Rule, which would make the Proposed Rule permanent.

SUMMARY OF EXPRESS TERMS

Although the Governor retains authority to issue Executive Orders to temporarily suspend or modify regulations pursuant to the Executive Law, these regulatory amendments provide an expedient and coherent plan to implement quickly the relevant temporary suspensions or modifications. The regulatory amendments permit the State Commissioner of Health or designee to take specific actions, as well as to temporarily suspend or modify certain regulatory provisions (or parts thereof) in Titles 10 and 18 of the NYCRR during a state disaster emergency, where such provisions are not required by statute or federal law. These amendments also permit the Commissioner to take certain actions, where consistent with any Executive Order (EO) issued by the Governor during a declared state disaster emergency. Examples include issuing directives to authorize and require clinical laboratories or hospitals to take certain actions consistent with any such EOs, as well as the temporary suspension or modification of additional regulatory provisions when the Governor temporarily suspends or modifies a controlling state statute.

The regulatory amendments also require hospitals to: develop disaster emergency response plans; maintain a 60-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 225, 2800, and 2803 of the Public Health Law; and in the Commissioner of Health by Sections 576 and 4662 of the Public Health Law and Section 461 of the Social Services Law, Title 10 (Health) and Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective upon filing with the Secretary of State, to read as follows:

A new Part 360 is added to Title 10, to read as follows:

Part 360 Surge and Flex Health Coordination System Activation During a State Disaster

Emergency Declaration

Part 360. Surge and Flex System

Section 360.1. Administrative Purpose, Application and Scope

(a) Administrative purpose.

Hospitals across New York State, prior to the COVID-19 pandemic, rarely worked together or coordinated as a unified system. But a pandemic on the scale of the COVID-19 crisis demonstrated that hospitals could not meet the demand of the moment unless a new and innovative system was put into place requiring unprecedented coordination, cooperation, and agility. The New York State Department of Health takes note of the successful implementation of the Surge and Flex System by New York State's hospitals and offers these regulations as an additional way to strengthen the pandemic response. Surge and Flex Health Coordination System Activation has helped hospitals respond to the COVID-19 state disaster emergency, and New

York's hospitals have made commendable efforts to coordinate their response to the pandemic, to direct patients to the hospitals with the capacity to treat them, and to increase capacity as needed, during each wave of the pandemic.

The COVID-19 crisis demanded a new coordinated approach to ensure no one hospital was overwhelmed by COVID-19 patients or needed more ventilators, while a hospital nearby had capacity for more patients and excess equipment. It was imperative for government to coordinate and organize all hospitals under the umbrella of one unified system, and efficiently use all the resources available in the state to attempt to meet the significant demands of the crisis.

The "Surge and Flex" system is designed to create a single, coordinated statewide system to prevent a disaster from overwhelming any one hospital in the state. The purpose of this NYSDOH regulation is to institutionalize Surge and Flex operation, giving hospitals the time and guidance to adequately prepare for a potential future activation of Surge and Flex. This regulation provides the Department of Health with the necessary tools to enact Surge and Flex operation during another wave of COVID-19, or a future public health emergency. Further, this regulation is designed to help each hospital prepare for this contingency in order to ensure a straightforward transition from standard operating procedures to "Surge and Flex."

(b) Application and Scope. In the event of a State disaster emergency declared pursuant to section 28 of the Executive Law, the Commissioner may exercise the authorities granted in this Part, thereby maximizing the efficiency and effectiveness of the State's hospital systems and mitigating the threat to the health of the people of New York. Further, this Part establishes certain ongoing emergency planning requirements, called the Surge and Flex Health Care Coordination System, for facilities and agencies regulated by the Department.

To the extent that any provision of this Part conflicts with any other regulation of the Department, this Part shall take precedence. All authorities granted to the Commissioner shall be subject to any conditions and limitations that the Commissioner may deem appropriate. The Commissioner may delegate activation of the authorities provided by this Part to appropriate executive staff within the Department. In the event that there are inconsistent statutes, which would preclude effectiveness of such regulation, such regulation shall be effective upon the suspension of such inconsistent statute by the Governor pursuant to authority in Article 2-B of the Executive Law, and such regulation shall immediately be effective.

Section 360.2. Surge and Flex Health Care Coordination System Requirements.

(a) In the event of a declared State disaster emergency, the Commissioner shall have all necessary authority and procedures to activate the Surge and Flex Health Care Coordination System (hereinafter “Surge and Flex System”), including the following:

(1) Increase Bed Capacity. At the Commissioner’s direction, which shall be incremental and geographically targeted, health care facilities shall increase by up to 50% the number of acute care beds and/or change the service categories of beds certified or otherwise approved in any entity regulated by the Department. At the Commissioner’s direction, health care facilities shall postpone up to 100% of non-essential elective procedures or allow such procedures only pursuant to such conditions as the Commissioner may determine. The Department shall establish procedures to approve temporary changes at regulated health care facilities to physical plants, to facilitate the increased capacity and shall expedite review of construction applications related to temporary locations, provided that schematics are filed with the Department and patient safety is maintained.

(2) Enhanced Staffing Capacity. Health care facilities shall establish plans to meet enhanced staffing levels sufficient to ensure that the increased bed capacity has adequate staffing. The Commissioner may further expand or modify criteria for staffing. Health care facilities shall have access to a State-run portal for staffing needs identifying both volunteers and available staff; whether licensed or registered in New York State, or authorized or licensed to practice in any other state or Canada.

(3) Availability of Supplies and PPE. Health care facilities shall maintain and actively manage a supply of personal protective equipment (PPE) appropriate for use during a declared health emergency that could last at least 60-days pursuant to Section 405.11(g) of this Title. The Commissioner shall have all necessary authority to re-distribute the resources of a regulated entity if there is a determination that such resources are limited and in order to preserve the health and safety of New Yorkers, including:

- (i) Requiring that any medical or other equipment that is held in inventory by any entity in the State, or otherwise located in the State, be reported to the Department, in a form and with such frequency as the Commissioner may determine.
- (ii) Requiring that the patient census be reported to the Department, in a form and with such frequency as the Commissioner may determine.
- (iii) For any infectious and communicable disease, ensuring that testing results are reported immediately if positive, and as determined by the Commissioner if such testing results are negative, via the electronic clinical laboratory reporting system or as the Commissioner may determine.
- (iv) Suspending or restricting visitation, in accordance with the need to conserve PPE, and subject to such conditions or limitations as the Commissioner may determine.

(4) Statewide Coordination.

- (i) Discharging, transfer, and receiving of patients. Health care facilities regulated by the Department shall, if directed to do so by the Commissioner, rapidly discharge, transfer, or receive patients, while protecting the health and safety of such patients and residents, and consistent with the Emergency Medical Treatment and Active Labor Act (EMTALA). The Department shall coordinate with health care facilities to balance individual facility patient load, and may promulgate further directives to specify the method and manner of transfer or discharge.
- (ii) Designating Health Care Facilities as Trauma Centers. The Department is authorized to designate an entity as a trauma center; extend or modify the period for which an entity may be designated as a trauma center; or modify the review team for assessment of a trauma center; or change the level of acuity designation or health services of a facility or other determination about patient care as appropriate, including restricting admission or treatment to patients with a particular diagnosis.
- (iii) Maintaining a Statewide Health Care Data Management System. Health care facilities or health systems shall report as directed by the Department any information necessary to implement the Surge and Flex System (e.g. available hospital beds, equipment available and in use) and the Department shall use that health facility or health system data in order to monitor, coordinate, and manage during the emergency.

Section 360.3. Hospital emergency Surge and Flex Response Plans.

(a) Every general hospital (hereinafter, “hospital”) shall adopt a detailed emergency Surge and Flex Response Plan (hereinafter, “plan”) that, at a minimum, includes the following elements:

- (1) Bed surge plan. The plan shall explain how the hospital will increase the number of current staffed acute care operational beds to a number set by the Commissioner, which shall be up to a 50% increase of such beds within seven days from the date of the declaration of the state disaster emergency. For the purposes of this Part, an “acute care operational bed” means a bed that is staffed and equipped with appropriate infrastructure such that it can be used to deliver health care services to a patient. The Commissioner may further define the type of acute care operational beds for a given state disaster emergency, which may include isolation beds, intensive care (ICU) beds, pediatric and/or acute care beds. The plan shall contain scenarios for increases of current staffed acute care operational beds in phased increments, detailing the associated considerations for PPE, staffing, and other supplies and equipment, including whether the hospital can meet those requirements using internal resources and capabilities, as well as intra-system load balancing and postponement of some or all non-essential elective procedures. These plans shall inform the Commissioner’s directives, which shall be incremental and geographically tailored at the Statewide, regional, or community level, as dictated by infection rate data.
- (2) PPE surge plan. The plan shall explain how the hospital will increase its supply of personal protective equipment (PPE) appropriate for use in a pandemic to achieve continuous maintenance of its required 60-day supply of PPE, pursuant to section 405.11(g) of this Title. The plan shall list the contracted entities or other supply chain agreements executed by the hospital. Such plan shall further include, as appropriate,

- how the hospital will repurpose existing equipment, replenish the inventory from other areas of the health system, and establish cooperative agreements to obtain PPE to accommodate supply chain interruptions. A PPE surge plan may provide for hospital utilization of some, but not all, of the stockpile reserves during a State disaster emergency, provided that within 30 days of the end of the State disaster emergency, the stockpile reserve is fully restored.
- (3) Mass casualty plan. The plan shall explain how the hospital will receive and treat mass casualty victims, in the event of a secondary disaster arising from the interruption of normal services resulting from an epidemic, earthquake, flood, bomb threat, chemical spills, strike, interruption of utility services, nuclear accidents and similar occurrences, while addressing the continued need for surge capacity for the underlying state disaster emergency declaration.
- (4) Staffing plan. The plan shall explain how the hospital will: identify and train backups for employees who may be unable to report to work during a pandemic; institute employee overtime protocols; and increase staffing by inter- and intra-system loan, cross-training, and volunteer programs, which would be operational on seven days' notice.
- (5) Capital plan. The plan shall explain how the hospital shall ensure continuous operation of facilities and access to utilities, materials, electronic devices, machinery and equipment, vehicles, and communication systems. The plan shall ensure that the hospital routinely performs all required maintenance and peak load testing of its infrastructure systems, including: electrical, heating, ventilation and air conditioning (HVAC), and oxygen supply.

(b) The Chief Executive Officer (CEO) of the hospital, or system if authorized by the Commissioner to report on a system-wide basis, shall certify to the review and approval of the plan, including an attestation that it can be implemented and achieved in the event of a declared disaster emergency. The CEO shall be responsible for ensuring that the plan is reviewed and updated, as necessary, periodically as specified by the Commissioner and shall re-certify that it is able to be implemented and achieved upon each review.

(c) The Department may require the hospital to submit its disaster emergency response plan and history of semi-annual certifications for review, and may require the hospital to make such amendments to the plan as the Commissioner deems appropriate, to ensure that the plan will achieve the requirements established in subdivision (a) of this section, including increases in bed capacity.

(d) In the event of a declared state disaster emergency, any or all hospitals shall execute their plans immediately upon the direction of the Commissioner.

(e) Additional preparedness requirements.

(1) PPE. Every hospital shall, at all times, continue to maintain the required 60-day supply of PPE appropriate for use in a disaster emergency including a pandemic, pursuant to section 405.11(g) of this Title.

(2) Information technology. Every hospital shall ensure that non-essential staff who are capable of working remotely in the event of an emergency are equipped and trained to do so, and that infrastructure is in place to allow for the repurposing of existing workspaces as needed when activating the Surge and Flex System.

(f) Reporting requirements during the activation of the Surge and Flex System.

(1) In the event of a declared state disaster emergency, upon the Commissioner's direction, hospitals or health systems shall report to the Department all data requested by the Commissioner, in a manner determined by the Commissioner under Section 306.2.

Such data may include, but shall not be limited to:

- (i) Bed availability, both in total and by designated service.
- (ii) Bed capacity, meaning acute care operational beds as defined in paragraph (a)(1) of this Section.
- (iii) Patient demographics.
- (iv) Other health statistics, including deaths.
- (v) PPE and other supplies, in stock and ordered.
- (vi) PPE and other supply usage rates.

(2) Such reports shall be submitted periodically as determined by the Commissioner, except and unless otherwise directed by the Department.

Section 360.4 Clinical laboratory testing

(a) In the event of a declared state disaster emergency, the Commissioner shall have all necessary authority to:

- (1) Authorize clinical laboratories to operate temporary collecting stations to collect specimens from individuals.

(b) In addition, and to the extent consistent with any Executive Order issued by the Governor, the Commissioner shall have all necessary authority to:

- (1) Waive permit requirements for clinical laboratories and establish minimum qualifications to allow non-permitted clinical laboratories to accept and test

specimens from New York State, provided that such laboratories must meet any federal requirements.

- (2) Establish minimum qualifications of individuals that may perform clinical laboratory tests, provided that such persons meet federal requirements.
 - (3) Allow clinical laboratories to accept specimens without an order, subject to a plan approved by Commissioner to ensure the result of any tests are reported to the patient or the patient's personal representative and there will be appropriate follow up with the patient based on the results.
 - (4) Authorize licensed pharmacists to order clinical laboratory tests, consistent with federal law, including certificate of waiver requirements.
 - (5) Permit licensed pharmacists to be designated as qualified healthcare professionals for the purpose of directing a limited service laboratory, pursuant to Section 579 of the Public Health Law.
 - (6) Permit licensed pharmacists to order and administer clinical tests.
- (c) Prioritization of clinical laboratory tests. In the event the declared state disaster emergency requires utilization of clinical laboratory testing at a rate that exceeds available capacity, no laboratory shall perform such test unless the test has been ordered consistent with the testing prioritization published by the Commissioner.
- (d) Reporting of results of any communicable disease during a Surge and Flex period shall be made immediately via the Electronic Clinical Laboratory Reporting system, if positive, and on a schedule as determined by the Commissioner if negative.

Subdivision (g) of section 405.24 of 10 NYCRR is amended to read as follows:

Emergency and disaster preparedness. The hospital shall have a written plan, rehearsed and updated at least twice a year, with procedures to be followed for the proper care of patients and personnel, including but not limited to the reception and treatment of mass casualty victims, in the event of an internal or external emergency or disaster arising from the interruption of normal services resulting from earthquake, flood, bomb threat, chemical spills, strike, interruption of utility services, nuclear accidents and similar occurrences. Personnel responsible for the hospital's accommodation to extraordinary events shall be trained in all aspects of preparedness for any interruption of services and for any disaster. This shall be in addition to the Surge and Flex Plan that is required pursuant to Part 360 of the Title.

Section 400.1 of 10 NYCRR is amended to read as follows:

(a) This Subchapter shall be known and may be cited as "Medical Facilities--Minimum Standards," and shall apply to medical facilities defined as hospitals within article 28 of the Public Health Law. The standards within a particular article shall constitute the minimum standards for the identified medical facility in addition to those standards that may apply to such facilities as set forth in Articles 1 and 3 of this Subchapter as applicable.

(b) During the period of a state disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Subchapter, that is not otherwise required by state statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the state disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of

regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a state disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies state statutes pursuant to his authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new section 700.5 of 10 NYCRR is added to read as follow:

700.5 Commissioner authority to suspend and modify regulations

During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Subchapter, that is not otherwise required by State statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the State disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies State statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or

modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new paragraph (8) is added to subdivision (e) of section 1001.6 of 10 NYCRR, to read as follows:

(8) During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Part, that is not otherwise required by State statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the state disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies state statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new section 1.2 of 10 NYCRR is added to read as follows.

1.2 Commissioner authority to suspend and modify regulations

During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Title, that is not otherwise required by state statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the state disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies state statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new paragraph (4) subdivision (g) of section 487.3 of 18 NYCRR is added to read as follows:

(4) During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Part, that is not otherwise required by State statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the state disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the

Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies state statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new paragraph (6) subdivision (f) of section 488.3 of 18 NYCRR is added to read as follows:

(6) During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Part, that is not otherwise required by state statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the State disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies State statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new paragraph (5) subdivision (g) of section 490.3 of 18 NYCRR is added to read as follows:

(5) During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Part, that is not otherwise required by State statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the State disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a state disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies State statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations with respect to facilities subject to Article 28 of the Public Health Law (PHL) is contained in PHL sections 2800 and 2803(2). PHL Article 28 (Hospitals), section 2800, specifies: “Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.” PHL section 2801 defines the term “hospital” as also including residential health care facilities (nursing homes) and diagnostic and treatment centers (D&TCs). PHL section 2803 (2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of such health care facilities.

PHL section 4662 authorizes the Commissioner to issue regulations governing assisted living residences. Social Services Law (SSL) section 461(1) authorizes the Commissioner to promulgate regulations establishing standards applicable to adult care facilities. PHL section 576 authorizes the Commissioner to regulate clinical laboratories.

PHL section 225 authorizes the Public Health and Health Planning Council (PHHPC) and the Commissioner to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York.

Upon the future declaration of any disaster emergency, any further authorization by the Governor pursuant to article 2-B of the Executive Law, if it should suspend any statutes which otherwise conflict with these regulations, will establish the immediate effectiveness of these provisions.

Legislative Objectives:

The objectives of PHL Article 28 include protecting the health of New York State residents by ensuring that they have access to safe, high-quality health services in medical facilities, while also protecting the health and safety of healthcare workers. Similarly, PHL Articles 36 and 40 ensure that the Department has the tools needed to achieve these goals in the home care and hospice spaces, and PHL section 4662 and SSL section 461 likewise ensure that the Department has appropriate regulatory authority with respect to assisted living residences and adult care facilities. PHL section 576 ensures that the Commissioner has appropriate regulatory authority over clinical laboratories. Finally, PHL section 225 ensures that the State Sanitary Code includes appropriate regulations in the areas of communicable disease control and environmental health, among others.

By permitting the Commissioner to temporarily suspend or modify regulatory provisions in each these areas, where not required by state statute or federal law, or where he is authorized

by a gubernatorial Executive Order, these amendments provide crucial flexibility for this and future emergency response efforts.

Needs and Benefits:

During a state disaster emergency, Section 29-a of the Executive Law permits the Governor to, among other things, “temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.”

Although the Governor retains authority to issue Executive Orders to temporarily suspend or modify regulations pursuant to the Executive Law, these proposed regulatory amendments would provide an expedient and coherent plan to implement quickly the relevant temporary suspensions or modifications. The proposed regulatory amendments would permit the State Commissioner of Health or designee to take specific actions, as well as to temporarily suspend or modify certain regulatory provisions (or parts thereof) in Titles 10 and 18 of the NYCRR during a state disaster emergency, where such provisions are not required by statute or federal law. These proposed amendments would also permit the Commissioner to take certain actions, where consistent with any Executive Order (EO) issued by the Governor during a declared state disaster emergency. Examples include issuing directives to authorize and require clinical laboratories or hospitals to take certain actions consistent with any such EOs, as well as the temporary suspension or modification of additional regulatory provisions when the Governor temporarily suspends or modifies a controlling state statute.

The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 60-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

During a state disaster emergency with significant public health impact, and where compliance with certain regulations may prevent, hinder or delay action necessary to cope with the disaster, as is the case with COVID-19, this authority will ensure that the State has the most efficient regulatory tools to facilitate the State's and regulated parties' response efforts to Surge and Flex the healthcare system statewide. Additionally, this authority will also ensure that the Department has the flexibility to impose additional requirements, where necessary, to ensure effective response to a declared state disaster emergency. Accordingly, these tools will help ensure the health and safety of patients and residents in New York State.

Costs:

Costs to Regulated Parties:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within, and as part of, a coordinated response to a specific situation.

To the extent that additional requirements are imposed on regulated parties by these proposed regulatory amendments, most requirements would be in effect only for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible.

Costs to Local Governments:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within and as part of a coordinated response to a specific situation.

To the extent additional requirements are imposed on local governments that operate facilities regulated by the Department, most requirements would be in effect only for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible.

Cost to State Government:

The administration and oversight of these planning and response activities will be managed within the Department's existing resources.

Paperwork:

It is not anticipated that the proposed regulatory amendments will impose any significant paperwork requirements. Although these proposed amendments require additional reporting,

these reports can be submitted electronically using the current platforms that facilities are already using. Moreover, such reporting requirements would only be activated during a declared state disaster emergency, thereby limiting the burden.

Local Government Mandates:

Facilities operated by local governments will subject to the same requirements as any other regulated facility, as described above.

Duplication:

These proposed regulatory amendments do not duplicate state or federal rules.

Alternatives:

The alternative would be to not promulgate the regulation. However, this alternative was rejected, as the Department believes that these regulatory amendments are necessary to facilitate response to a state disaster emergency.

Federal Standards:

42 CFR 482.15 establishes emergency preparedness minimum standards in four core areas including emergency planning, development of applicable policies and procedures, communications plan, and training and testing. These proposed amendments would complement the federal regulation and further strengthen hospitals' emergency preparedness and response programs.

Compliance Schedule:

These regulatory amendments will become effective upon filing with the Department of State.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

The proposed regulatory amendments would primarily affect health care professionals, licensed health care facilities, permitted clinical laboratories, emergency medical service personnel, providers, and agencies, and pharmacies.

Compliance Requirements:

A significant portion of these regulatory amendments are designed to provide regulatory relief during a declared state disaster emergency. Where the regulatory amendments would impose requirements, most of them would only be applicable when there is a declared state disaster emergency. An example of a requirement that may be implemented during a declared state disaster emergency is reporting of data and inventory as requested by the Commissioner (i.e. medical supplies and equipment, as well as hospital bed capacity, bed utilization, patient demographics, etc.). There are certain ongoing requirements proposed by this regulatory amendments, which would apply regardless of whether there is a declared state disaster emergency, in which hospitals would be required to: (1) maintain minimum levels of PPE; (2) ensure work from home capabilities; and (3) develop disaster emergency response plans.

Professional Services:

It is not expected that any professional services will be required to comply with the proposed regulatory amendments.

Compliance Costs:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within and as part of a coordinated response to a specific situation.

To the extent additional requirements are imposed on small businesses and local governments by these proposed regulatory amendments, most requirements would only be in effect for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible. Ongoing costs requiring hospitals to maintain a minimum PPE supply and ensure work from home capabilities should have been addressed throughout the ongoing COVID-19 pandemic, thereby limiting costs of continued implementation. Ongoing costs related to hospital development of disaster emergency response plan will complement and build upon existing planning documents that hospitals are already required to have, which also limits costs.

Economic and Technological Feasibility:

There are no economic or technological impediments to the proposed regulatory amendments.

Minimizing Adverse Impact:

Although the proposed regulatory amendments impose some additional requirements on regulated parties, most of these requirements are only triggered during a declared state disaster

emergency. Proposed amendments that would impose ongoing requirements would only apply to hospitals, and as noted above, will largely be a continuation of the efforts already being employed by these entities.

Small Business and Local Government Participation:

The Surge and Flex Health Care Coordination System was activated during the COVID-19 State disaster emergency which was first declared on March 7, 2020, and it has been used throughout the COVID-19 pandemic. The public has been permitted to comment at the public meetings during which the Public Health and Health Planning Council has approved this regulation on an emergency basis. A Notice of Proposed Rule Making was published in the *State Register* on February 16, 2022, with a public comment period that ended on April 18, 2022, and the Department will publish an Assessment of Public Comment before a Final Rule is adopted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Number of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.” The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County

Genesee County

Rensselaer County

Yates County

Schenectady County

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County

Monroe County

Orange County

Broome County

Niagara County

Saratoga County

Dutchess County

Oneida County

Suffolk County

Erie County

Onondaga County

Reporting, recordkeeping, and other compliance requirements; and professional services:

A significant portion of these regulatory amendments are designed to provide regulatory relief during a declared state disaster emergency. Where the regulatory amendments would impose requirements, most of them would only be applicable when there is a declared state disaster emergency. An example of a requirement that may be implemented during a declared state disaster emergency is reporting of data and inventory as requested by the Commissioner (i.e. medical supplies and equipment, hospital bed capacity, bed utilization, patient demographics, etc.). There are certain ongoing requirements proposed by this regulatory amendments, regardless of whether there is a declared state disaster emergency, in which hospitals would be required to: (1) maintain minimum levels of PPE; (2) ensure work from home capabilities; and (3) develop disaster emergency response plans. This regulation provides that the Commissioner's directives shall be incremental and geographically tailored and targeted at the Statewide, regional, or community level, as dictated by infection rate data.

It is not expected that any professional services will be required to comply with the proposed regulatory amendments.

Compliance Costs:

As a large part of these regulatory amendments would give the State Commissioner of Health authority to temporarily suspend or modify certain regulations within Titles 10 and 18 during a state disaster emergency, these regulatory amendments are not expected to result in any significant costs to public and private entities in rural areas.

To the extent additional requirements are imposed on public and private entities in rural areas by these proposed regulatory amendments, such requirements would only be in effect for the duration of a declared state disaster emergency.

Lastly, per SAPA § 202-bb(3)(c), it is not anticipated that there will be any significant variation in cost for different types of public and private entities in rural areas.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

Although the proposed regulatory amendments impose additional requirements on regulated parties, including those in rural areas, most of these requirements are only triggered during a declared state disaster emergency. Proposed amendments that would require disaster emergency preparedness planning on the part of regulated parties will complement and build upon existing state and federal planning requirements.

Rural Area Participation:

The Surge and Flex Health Care Coordination System was activated during the COVID-19 State disaster emergency which was first declared on March 7, 2020, and it has been used throughout the COVID-19 pandemic. The public has been permitted to comment at the public meetings during which the Public Health and Health Planning Council has approved this regulation on an emergency basis. A Notice of Proposed Rule Making was published in the *State Register* on February 16, 2022, with a public comment period that ended on April 18, 2022, and the Department will publish an Assessment of Public Comment before a Final Rule is adopted.

JOB IMPACT STATEMENT

The Department of Health has determined that these regulatory changes will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

EMERGENCY JUSTIFICATION

During a state disaster emergency with significant public health impact, and where compliance with certain regulations may prevent, hinder or delay action necessary to cope with the disaster, as has been the case with COVID-19, these proposed regulations will ensure that the State has the most efficient regulatory tools to facilitate the State's and regulated parties' response efforts to Surge and Flex the healthcare system statewide. Additionally, this authority will also ensure that the Department has the flexibility to impose additional requirements, where necessary, to ensure effective response to a declared state disaster emergency. Accordingly, these tools will help ensure the health and safety of patients and residents in New York State.

The Surge and Flex Health Care Coordination System was activated during the COVID-19 State disaster emergency which was declared by Governor Cuomo under Executive Orders No. 202 through 202.111 (March 7, 2020 to June 15, 2021; see 9 NYCRR §§8.202 through 8.202.111), the State disaster emergency which was declared by Governor Hochul under Executive Orders No. 4 through 4.12 (September 27, 2021 to September 27, 2022; see 9 NYCRR §§9.4 through 9.4.8), and the State disaster emergency which was declared by Governor Hochul under Executive Orders No. 11 through 11.9 (November 26, 2021 to September 12, 2022; see 9 NYCRR §§9.11 through 9.11.9).

Of note, a Notice of Proposed Rule Making was published in the *State Register* on February 16, 2022, with a public comment period that ended on April 18, 2022. The Department intends these emergency regulations to be in effect only until such time as the Department can fully review the public comments received, determine whether any amendments to the rule are necessary based on such comments, publish an Assessment of Public Comment and adopt a Final Rule, which would make the Proposed Rule permanent.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 206 and 2803 of the Public Health Law and sections 461 and 461-e of the Social Services Law, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended by adding a new Subpart 66-4, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new Subpart 66-4, titled COVID-19 Nursing Home and Adult Care Facility Vaccination Program, is added to read as follows:

66-4.1. Requirements for Nursing Homes

- (a) Every nursing home regulated pursuant to Part 415 of this Title shall offer all consenting, unvaccinated existing personnel and residents an opportunity to receive the first or any recommended next or booster dose of the COVID-19 vaccine.
- (b) The operator and administrator of every nursing home regulated pursuant to Part 415 of this Title must ensure that all new personnel, including employees and contract staff, and every new resident and resident readmitted to the facility has an opportunity to receive the first or any recommended next or booster dose of the COVID-19 vaccine within fourteen days of having been hired by or admitted or readmitted to such facility, as applicable.
- (c) The requirement to ensure that all new and current personnel and residents have an opportunity to receive the COVID-19 vaccination, as set forth in subdivisions (a) and (b) of this section, shall include, but not be limited to:

- (1) Posting conspicuous signage throughout the facility reminding personnel and residents that the facility offers COVID-19 vaccination; and
 - (2) Providing all personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for a COVID-19 vaccination but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request vaccination from the facility. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.
- (d) Nursing homes must comply with the requirements for vaccination of personnel in 10 NYCRR § 415.19(a)(5).

66-4.2. Requirements for Adult Care Facilities

- (a) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title shall make diligent efforts to arrange for all consenting, unvaccinated existing personnel and residents to register for a vaccine appointment and an appointment to receive any recommended booster, and shall document attempts to schedule and methods used to schedule the vaccine in the individual's personnel file or case management notes, as applicable.
- (b) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title must arrange for the COVID-19 vaccination, including the first or any recommended next or booster dose, of all new personnel, including employees and contract staff, and every resident upon admission to the

facility. The requirement to arrange for COVID-19 vaccination of such personnel and residents shall include, but not be limited to:

(1) For residents:

(i) during the pre-admission screening process, and in no event after the first day of admission, the adult care facility shall screen the prospective or newly-admitted resident for COVID-19 vaccine eligibility, including whether any first doses of the vaccine were previously administered, and whether the resident is interested in obtaining the COVID-19 vaccine, including a recommended booster. Such information shall be documented with the resident's pre-admission screening information and, if admitted, retained in the resident's case management records; and

(ii) within seven days of admission, the facility shall make diligent efforts to schedule all consenting and eligible residents for the COVID-19 vaccination, including a recommended booster. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the resident's case management notes.

(2) For personnel:

(i) during the pre-employment screening process, the facility shall solicit information from the prospective personnel regarding their vaccination status, including whether any first doses of the vaccine were previously administered, and whether the prospective personnel is interested in obtaining the COVID-19 vaccine. Such information must be documented with the personnel's pre-employment screening information and, if hired, retained in the personnel file; provided, however, that nothing in this paragraph shall be construed to require an adult care facility to make any hiring determination based upon the prospective personnel's COVID-19 vaccination status, history, or interest in COVID-

19 vaccination; and

(ii) within seven days of hiring new personnel, the facility shall make diligent efforts to schedule all consenting and eligible new personnel for the COVID-19 vaccination. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the individual's personnel file.

(iii) Adult care facilities must comply with the requirements for vaccination of personnel in 18 NYCRR §§487.9(a)(18), 488.9(a)(14), 490.9(a)(15), and 10 NYCRR §1001.11(q)(5), as applicable.

(c) The facility shall further provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for a COVID-19 vaccination, but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request the facility arrange for their vaccination. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.

66-4.3. Penalties.

(a) A violation of any provision of this Subpart shall be subject to penalties in accordance with sections 12 and 12-b of the Public Health Law.

(b) For adult care facilities, failure to arrange for the vaccination of every facility resident and personnel as set forth in section 66-4.2 of this Part constitutes a "failure in systemic practices and procedures" under Social Services Law 460-d(7)(b)(2)(iii) and pursuant to 18 NYCRR 486.5(a)(4)(v).

(c) In addition to any monetary penalties or referral for criminal investigation to appropriate entities, the Department shall be empowered to immediately take custody and control of such vaccine at a nursing home and re-allocate to another provider.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority is provided under sections 201, 206, and 2803 of the Public Health Law (PHL) and sections 461 and 461-e of the Social Services Law (SSL).

PHL § 201 authorizes the New York State Department of Health (Department) to control and promote the control of communicable diseases to reduce their spread. Likewise, PHL § 206 authorizes the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases.

PHL § 2803 authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities.

SSL § 461 requires the Department to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF). SSL § 461-e authorizes the Department to promulgate regulations to require adult care facilities to maintain certain records with respect to the facilities residents and the operation of the facility.

Legislative Objectives:

The legislative objectives of PHL §§ 201 and 206 are to protect the health and life of the people of the State of New York, including by controlling the spread of communicable diseases. The legislative objectives of PHL Article 28, including PHL § 2803, include the efficient provision and proper utilization of health services of the highest quality. The legislative objective of SSL § 461 is to promote the health and well-being of residents of adult care

facilities. Collectively, the legislative purpose of these statutes is to protect the residents of New York's long-term care facilities by providing safe, efficient, and adequate care.

Needs and Benefits:

These regulations are necessary to prevent the spread of COVID-19 in nursing homes and adult care facilities and to help ensure the health and life of residents of nursing homes and ACFs by requiring such congregate care facilities to offer or arrange for consenting residents and personnel to receive the COVID-19 vaccine. This requirement will help ensure residents are less likely to suffer a COVID-related death or severe illness and that fewer staff test positive for COVID-19. To date, there are an approximate 8,200 (9%) nursing home and 1,100 (4%) adult care facility residents that remain unvaccinated. As such, the potential for COVID-19 introduction or re-introduction to this vulnerable population remains a risk and the need for protecting their health and safety a top high priority.

COVID-19 is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York's nursing homes and ACFs, it is imperative that nursing homes and ACFs facilitate the prompt vaccination of its residents. Moreover, in order to ensure that nursing home and ACF personnel can safely provide resident care, it is critically important that nursing homes offer continued COVID-19 vaccinations on-site for their current and new personnel and that ACFs arrange for

their current and new personnel to receive the COVID-19 vaccine at an off-site location, such as a pharmacy.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to best protect the residents of New York's nursing homes and ACFs.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series." Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation, particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a nursing home or ACF, in which case costs will be the same as costs for private entities. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two adult care facilities operated by county governments.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities.

Local Government Mandates:

Nursing homes and ACFs operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28 or ACF licensed under SSL Article 7, Title 2.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that nursing homes and ACFs adequately ensure their residents and personnel are vaccinated against COVID-19. Accordingly, the alternative of not issuing these regulations was rejected.

Federal Standards:

No federal standards apply.

Compliance Schedule:

The regulations will become effective upon publication of a Notice of Adoption in the New York State Register.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a nursing home or ACF. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two ACFs operated by county governments (Chenango and Warren Counties).

Additionally, to date, 79 nursing homes in New York qualify as small businesses given that they have 100 or fewer employees. There are also 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

This regulation primarily requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as State-run vaccination sites or a local pharmacy. The regulation also requires facilities to provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for or offer, as applicable, a COVID-19 vaccination, but they declined. Further, nursing homes are required to post conspicuous signage throughout the facility reminding personnel and residents that the facility offers COVID-19 vaccinations.

Professional Services:

No professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), “starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series.” Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with

transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Small Business and Local Government Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of COVID-19 if contracted, particularly by older adults or persons with comorbidities, small business and local governments were not directly consulted. However, the Department will notify such entities of the existence of these regulations and the opportunity to submit comments or questions to the Department.

Cure Period:

This regulation does not include a cure period given the serious threat the COVID-19 virus causes to all New Yorkers, particularly those residing in nursing homes and adult care facilities, considering such residents' age and comorbidities. As detailed more fully within the

regulations, nursing homes and adult care facilities will have 14 and 7 days, respectively, to offer vaccinations to residents and staff. The Department finds these 14- and 7-day periods to comply with the regulatory requirements are sufficient to ensure facilities can establish or revise their vaccination policies and procedures, while balancing the urgent need to protect facility residents and personnel from this dangerous disease.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States

Census estimated county populations for 2010:

Albany County
Broome County
Dutchess County
Erie County

Monroe County
Niagara County
Oneida County
Onondaga County

Orange County
Saratoga County
Suffolk County

Both licensed nursing homes and ACFs are located in these identified rural areas.

Reporting, recordkeeping, and other compliance requirements; and professional services:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities. Additionally, no professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover

administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), “starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series.” Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation’s health and safety benefits to residents and staff.

Rural Area Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of the COVID-19 virus on this population, facilities located in rural areas were not directly consulted. However, the Department will notify covered entities located in rural areas of the existence of these regulations and the opportunity to submit comments or questions to the Department.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.



Project # 221218-C
United Memorial Medical Center

Program: Hospital
Purpose: Construction

County: Monroe
Acknowledged: July 8, 2022

Executive Summary

Description

United Memorial Medical Center (UMMC), an existing Article 28 not-for-profit corporation, requests approval to construct and certify a new extension clinic at 8103 Oak Orchard Road, Batavia (Genesee County). UMMC has two hospital campuses in Batavia. The main hospital site at 127 North Street has 111 beds and the Bank Street Campus at 16 Bank Street has 20 chemical dependency beds. The proposed site, to be known as the RRH Batavia Destination Campus, will also contain extension clinics operated by The Unity Hospital of Rochester (Unity) and Rochester General Hospital (RGH). All three hospitals are operated by Rochester Regional Health (RRH). The Unity and RGH administrative review applications are being reviewed contemporaneously.

The new UMMC extension clinic will provide Primary Medical Care, Other Medical Specialties, and Ambulatory Surgery Single Specialty-Gastroenterology.

Rochester Regional Hospital (RRH) will lease space to UMMC through a related non-Article 28 organization, the GRHS Foundation, Inc. (GRHSF).

Robert R. Mayo, M.D., who is board certified in Nephrology and Internal Medicine, will serve as Medical Director. RRH Batavia Destination

Campus will be located 2.2 miles and six minutes from UMMC's main campus.

OPCHSM Recommendation
Contingent Approval

Need Summary

The extension clinic, located in a health professional shortage area of primary care, will provide a variety of medical services to the residents of Genesee, Orleans, and Wyoming Counties.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law

Financial Summary

The total project cost of \$33,776,631 will be 90% funded via bond issuance with a fixed rate of approximately 2.50% - 3.50% at a 30-year term and 30-years payout period. The remaining project cost of \$3,377,663 will be met with RRH funds.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,732,037	\$13,960,371
Expenses	<u>\$10,236,628</u>	<u>\$15,941,509</u>
Net Income/(Loss)	(\$3,504,591)	(\$1,981,138)

Recommendations

Health Systems Agency
The Finger Lakes HSA recommends Approval

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of a bond resolution, acceptable to the Department of Health. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]

Approval conditional upon:

1. This project must be completed by **September 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **May 1, 2023**, and construction must be completed by **June 1, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date
October 6, 2022

Need and Program Analysis

Background

The proposed extension clinic will add and/or expand current hospital programs from other sites including captive PC sites and outpatient clinics on the UMMC campus. The clinic will provide a wide array of services including primary care (including pediatric care), otolaryngology, allergy, rheumatology, endocrinology, infusion, neurology, neurosurgery, pain management, urgent care, gastroenterology (office visits and ambulatory surgery), orthopedics, imaging, and lab. The extension clinic will include nine procedure rooms, of which two will be used for ambulatory surgery. The other procedure rooms will be used for outpatient procedures that can be performed safely in an outpatient treatment room. The proposed site will also contain extension clinics operated by The Unity Hospital of Rochester (Unity) and Rochester General Hospital (RGH). All three hospitals are operated by Rochester Regional Health (RRH) and the property will be known as the RRH Batavia Destination Campus.

Staffing is expected to be 37.1 FTEs at Year One and 60.3 FTEs by Year Three.

Service Area

The primary service area (PSA) is Genesee, Orleans, and Wyoming Counties. All three counties are designated as Health Professional Shortage Areas for Primary Care Services (Medicaid Eligible). Additionally, Orleans County is a Medically Underserved Area (MUA), and in Wyoming County, the towns of Arcade and Castile are MUAs. See the BPNR Attachment for maps of the service area, including locations of other Article 28 sites.

Genesee County

The population of Genesee County in 2020 was 58,388 and is estimated to decrease slightly to 56,956 by 2025. According to Data USA, in 2019, 96.5% of the population in Genesee County has health coverage as follows.

Employer Plans	51.8%
Medicaid	16.7%
Medicare	14%
Non-Group Plans	13%
Military or VA	1.05%

Orleans County

The population of Orleans County in 2020 was 40,343 and is estimated to decrease slightly to 39,735 by 2025. According to Data USA, in 2019, 94.9% of the population in Orleans County has health coverage as follows.

Employer Plans	44.8%
Medicaid	21.8%
Medicare	13.3%
Non-Group Plans	13.4%
Military or VA	1.55%

Wyoming County

The population of Wyoming County in 2020 was 40,531 and is estimated to decrease slightly to 39,318 by 2025. According to Data USA, in 2019, 95.8% of the population in Wyoming County has health coverage as follows.

Employer Plans	50%
Medicaid	16.8%
Medicare	14.3%
Non-Group Plans	13.4%
Military or VA	1.4%

The following table is the demographic composition of Genesee, Orleans, and Wyoming Counties (separately) and the Primary Service Area (PSA), as compared to New York State.

Population Characteristics	Genesee	Orleans	Wyoming	PSA Total	New York State	PSA Comparison with NYS
2021 Population est.	57,853	40,191	40,491	138,535	19,835,913	-
2020 Population	58,388	40,343	40,531	139,262	20,201,249	-
Percent Growth (2020 – 2021)	-0.9%	-0.4%	-0.1%	-0.5%	-1.8%	Higher
White persons	92.9%	90.1%	92.2%	91.4%	69.6%	Higher
Black persons	3.2%	6.4%	5.6%	4.8%	17.6%	Lower
Asian persons	0.7%	0.6%	0.5%	0.6%	9.0%	Lower
Persons of Hispanic or Latino origin	3.5%	5.1%	3.3%	3.9%	19.3%	Lower
Foreign born persons	2.4%	2.9%	2.0%	2.4%	22.4%	Lower
Language other than English spoken at home	3.6%	6.1%	3.5%	4.3%	30.3%	Lower
High school graduates	92.2%	87.7%	90.5%	90.4%	87.2%	Higher
Persons 65 years old and over	19.3%	18.4%	18.6%	18.8%	16.9%	Higher
Persons below Poverty Level	10.2%	13.2%	9.6%	10.9%	12.7%	Lower
Median Household Income	\$60,635	\$52,958	\$58,746	\$57,812	\$71,117	Lower

The three-county PSA for this project is comprised of 138,535 residents. In 2012, the PSA contained 21,991 residents aged 65 and older, representing approximately 15.2% of the total PSA population. In 2021, the PSA contained 26,092 residents aged 65 and older, an increase of 18.6% over 2012. In 2021, the 65+ population represented approximately 18.8% of the total PSA population compared with 15.2% 10 years prior. As a comparison, the 65+ population comprised only 16.9% of the total New York State population in 2021. Per data from the Program on Applied Demographics (PAD) of Cornell University, the 65+ population within the PSA is projected to grow to 33,781 residents in 2030, representing a growth of 29.5% from 2021. As a comparison, the 65+ population within New York State is expected to grow by only 10.0% from 2021 to 2030.

Utilization (Visits)

Hospital	Existing Volume	Incremental Year 1 Volume	Total Year 1 Volume	Incremental Year 3 Volume	Total Year 3 Volume
UMMC	89,025	24,748	113,773	54,561	143,586
Rochester General (CON221219)	5,140	8,526	13,666	9,921	15,061
Unity Hospital (CON221217)	0	1,418	1,418	2,481	2,481
Grand Total	94,165	34,691	128,856	66,963	161,128

The existing volume in the table above represents 2021 activity at various practice sites operated by UMMC and RGH in the service area. While this will be a new site of service, the existing volumes are shown here to demonstrate that a majority of visits to the RRH Batavia Destination Campus are being relocated from currently spread-out, old, and inefficient existing practices and clinics. In the first year after completion, 78.2% of the projected volume will consist of existing visits that are currently being seen at these locations. The majority of the to-be-relocated visits are currently taking place on UMMC's North Street campus, which is facing a severe parking problem. Following completion of the project, it is anticipated that one or two old medical office buildings on the North Street campus will be demolished to mitigate the parking issue with the majority of providers currently seeing patients in those buildings relocating to the new site, which is 2.2 miles from the hospital campus.

It should be noted that the volume listed above includes new patient office visits, follow-up physician visits, procedures, including endoscopy procedures discussed above, lab tests, and imaging services, such as X-rays. An individual patient may experience numerous encounters contributing to the volume totals in the above table.

The breakdown of existing and projected volume for the UMMC clinic, by service line, is as follows:

Service Line	Current Volume	Percent Current	Year 1 Volume	Percent Year 1	Year 3 Volume	Percent Year 3
General Surgery	1,688	1.90%	2,225	1.96%	2,602	1.81%
Otolaryngology (ENT)	0	0	484	0.43%	958	0.67%
Allergy/Rheumatology	0	0	2,634	2.31%	8,104	5.64%
Endocrinology	799	0.90%	2,016	1.77%	4,718	3.29%
Infusion	0	0	2,057	1.81%	4,114	2.87%
Neurology, Neurosurgery, Pain Management	4,060	4.60%	6,876	6.04%	15,060	10.49%
Gastroenterology (office visits)	151	0.20%	1,392	1.22%	1,109	0.77%
Gastroenterology (ambulatory surgery)	0	0.00%	1,200	1.05%	2,400	1.67%
Urgent Care	12,701	14.30%	12,701	11.16%	12,701	8.85%
Imaging	27,629	31.00%	35,526	31.22%	35,773	24.91%
Lab	0	0	1,034	0.91%	1,422	0.99%
Primary Care & Peds	23,515	26.40%	25,465	22.38%	31,503	21.94%
Orthopedics	18,501	20.80%	20,181	17.74%	21,141	14.72%
TOTAL	89,025	100%	113,791	100.00%	143,586	100.00%

Note: General surgery visits are not ambulatory surgery cases, but rather office visits.

The breakdown of incremental visits by payor is as follows:

Payor	Year One		Year Three	
	Visits	Percent	Visits	Percent
Commercial MC	8,343	33.71%	18,393	33.71%
Medicare FFS	3,894	15.73%	8,586	15.74%
Medicare MC	5,796	23.42%	12,778	23.42%
Medicaid FFS	347	1.40%	765	1.40%
Medicaid MC	4,668	18.86%	10,292	18.86%
Private Pay	327	1.32%	720	1.32%
Charity Care	133	0.54%	294	0.54%
All Other	1,240	5.01%	2,734	5.01%
TOTAL	24,748	100.00%	54,562	100.00%

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Prevention Agenda

The Prevention Agenda priorities selected for action in UMMC's most recent community service plan include:

- Prevent Chronic Diseases
- Promote Well-Being and Prevent Mental and Substance Use Disorders

While the proposed project does not directly address these Prevention Agenda priorities, UMMC reports implementation and maintenance of a smoking cessation policy utilizing their electronic medical record (EMR) platform to make direct referrals to NYS Smokers Quitline for those self-reporting tobacco/nicotine use. Additionally, UMMC maintains an ongoing partnership with the county through its Cancer Service Program (CSP) to improve cancer screening access and engagement among eligible patients through the use of education sessions and mobile mammography events. Furthermore, UMMC has worked with local law enforcement departments to offer multiple 'Drug Take Back' events and has provided staff with training in engaging patients entering the Emergency Department under the influence of substances with the option to meet with peer advocate staff for additional substance use treatment resources.

United Memorial Medical Center reported \$239,750 in spending on community health improvement.

Conclusion

The new extension clinic will relocate and expand current United Memorial Medical center programs from other sites to provide a wide spectrum of medical services to the residents of Genesee, Orleans, and Wyoming Counties. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

Total project costs for new construction, equipment, and fees are estimated at \$33,776,631 with the following allocation:

New Construction	\$23,071,073
Design Contingency	1,153,553
Construction Contingency	1,153,553
Fixed Equipment (NIC)	1,164,862
Architect/Engineering Fees	1,614,975
Other Fees	461,421
Moveable Equipment	1,852,362
Telecommunications	1,655,138
Interim Interest Expense	854,971
Financing Costs	607,979
CON Fee	2,000
Additional Processing Fee	<u>184,744</u>
Total Project Cost	\$33,776,631

The applicant's financing plan is as follows:

RRH's Equity	\$3,377,663
Bond Issuance (Approximately 2.50% - 3.50% fixed rate at 30-year term and 30-years payout period)	<u>30,398,968</u>
Total Financing	\$33,776,631

The 2020-2021 certified financial statements and internal quarterly report of RRH as of March 31, 2022, reveal sufficient liquid resources available to meet the equity portion of the total project cost (BFA Attachment B). Raymond James, a multinational independent investment bank and financial services company has provided a letter of interest for the bond at the stated terms.

Operating Budget

The applicant submitted an operating budget for the first and third years, in 2022 dollars:

	Year One (2023)		Year Three (2025)	
	Per Visit	Total	Per Visit	Total
Revenues				
Commercial MC	\$399.63	\$3,334,144	\$375.91	\$6,914,085
Medicare FFS	\$155.16	604,204	\$145.93	1,252,952
Medicare MC	\$255.34	1,479,939	\$240.18	3,068,981
Medicaid FFS	\$86.86	30,142	\$81.71	62,506
Medicaid MC	\$178.71	834,220	\$168.09	1,729,940
Private Pay	\$268.87	87,920	\$253.23	182,322
All Other*	\$291.51	361,468	\$274.17	749,585
Net Revenues		\$6,732,037		\$13,960,371
Expenses				
Operating	\$317.70	\$7,862,518	\$248.66	\$13,567,399
Capital	\$95.93	2,374,110	\$43.51	2,374,110
Total Expenses	\$413.63	\$10,236,628	\$292.17	\$15,941,509
Net Income/(Loss)		<u>(\$3,504,591)</u>		<u>(\$1,981,138)</u>
Visits		24,748		54,562
Cost Per Visit		\$413.63		\$292.17

*All other revenue represents worker's comp, no-fault, essential plans, child health plus, and family health plus.

The following is noted for the submitted operating budget:

- UMMC's existing volume of 89,025 visits will be relocated from current practice sites to the proposed extension clinic site.
- Revenue assumptions are based upon current reimbursement methodologies and previous experience for the proposed services at the hospital's existing sites.
- Staffing is based on the historical experience of the applicant in providing the proposed services at its existing sites and is increased based on the expected utilization. The recruitment strategy includes adding specialties not currently available and introducing employed specialists where private specialists are nearing retirement or not fully aligned with the RRH mission.
- Projected expenses and revenues for the first and third years of operation for the extension clinic are based on UMMC's actual expenses for the proposed services at the hospital's existing sites.
- The decrease in costs per visit from Year One to Year Three is due to economies of scale.
- The applicant has provided a letter indicating that the anticipated losses in Years One through Three will be funded through the operations of UMMC.

Utilization by payor source for the first and third years is as follows:

Payor	Year One (2023)		Year Three (2025)	
	Visits	%	Visits	%
Commercial MC	8,343	33.71%	18,393	33.71%
Medicare FFS	3,894	15.74%	8,586	15.74%
Medicare MC	5,796	23.42%	12,778	23.42%
Medicaid FFS	347	1.40%	765	1.40%
Medicaid MC	4,668	18.86%	10,292	18.86%
Private Pay	327	1.32%	720	1.32%
Charity Care	133	0.54%	294	0.54%
All Other	1,240	5.01%	2,734	5.01%
Total	24,748	100.00%	54,562	100.00%

Lease Agreement

The applicant has submitted a draft lease agreement for the site to be occupied as summarized below.

Premises:	134,482 square feet located at 8103 Oak Orchard Drive, Batavia, New York
Landlord:	GRHS Foundation, Inc.
Tenant:	United Memorial Medical Center
Term:	30 years
Rent:	Years 1-7: \$1,983,609.50 (\$165,300.70 per month) Years 8-30: \$1,647,404.50 (\$137,283.71 per month)
Provisions:	The tenant is responsible for Insurance, maintenance, repairs, utilities, and property taxes.

The applicant has submitted an affidavit attesting that the lease is a non-arm's length agreement in that RRH is the active parent of GRHS Foundation, Inc (GRHSF). The landlord, GRHSF, is a related entity of UMMC through RRH therefore the rental cost is based on the actual costs to GRHSF.

Capability and Feasibility

Total project costs of \$33,776,631 will be 90% funded via bond issuance with approximately 2.50% - 3.50% fixed rate at a 30-year term and 30-years payout period. Raymond James, a multinational independent investment bank and financial services company has provided a letter of interest for the bond at the stated terms. The remaining balance of \$3,377,663 will be met with RRH funds. The 2020-2021 certified financial statements, and the Internal quarterly report of RRH as of March 31, 2022, reveal sufficient liquid resources available to meet the equity portion of the total project cost (BFA attachment B).

The March 31, 2022, internal quarterly report for RRH reflects a positive working capital position of \$277,403,000, a positive net asset position of \$913,966,000, and a net operating income of \$7,655,000. The 2020-2021 certified financial statements of RRH show the entity had an average positive working capital position of \$285,548,500, an average positive net asset position of \$734,506,500, and an operating income of \$32,498,500.

BFA Attachment C is the March 31, 2022, internal quarterly report for UMMC which reflects a positive working capital position of \$60,894,000, a positive net asset position of \$58,108,000, and a net operating income of \$613,000. The 2021 Certified financial statements of UMMC show the entity had a positive working capital position of \$62,790,000, a positive net asset position of \$58,364,000, and an operating income of \$3,632,000.

The working capital requirement is estimated at \$4,613,600 based on two months of Year Three expenses and will be provided via the ongoing operations of UMMC. The March 31, 2022 internal quarterly report, reveals sufficient liquid resources available to meet the equity portion of the working capital requirement.

The submitted budget projects net losses of (\$3,504,591) and (\$1,981,138) for the first and third years of operation, respectively. The applicant has provided a letter indicating that the anticipated losses will be funded by UMMC operations. The financial statements of UMMC reveal sufficient liquid resources available to absorb these losses. The applicant has indicated that the "downstream revenue" generated through patient referrals for other services at UMMC will offset the projected direct loss from operations on the project. After the inclusion of downstream revenue, UMMC projects a Year One financial loss of (\$2,279,041) and a Year Three financial gain of \$25,878. The submitted budget appears reasonable.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

HSA Attachment	Finger Lakes Health Systems Agency Review
BPNR Attachment	Maps
BFA Attachment A	Organizational chart for Rochester Regional Health
BFA Attachment B	Rochester Regional Health March 31, 2022, Internal Quarterly Report and 2020-2021 Certified Financial Statements
BFA Attachment C	United Memorial Medical Center March 31, 2022, Internal Quarterly Report and 2021 Certified Financial Statements



Project # 211143-E
AMSC, LLC d/b/a Downtown Bronx ASC

Program: DTC
Purpose: Establishment

County: Bronx
Acknowledged: April 13, 2021

Executive Summary

Description

AMSC, LLC d/b/a Downtown Bronx ASC, an existing Article 28 multi-specialty ambulatory surgery diagnostic and treatment center at 951 Brook Avenue, Bronx, requests approval to transfer 100% of its current members' interests to Peoples ASC, LLC whose members are listed below.

center is current with its SPARCS reporting through June 2022. Lawrence J. Ottaviano, MD, who is Board-certified in Internal Medicine and Gastroenterology will serve as Medical Director. AMSC, LLC has negotiated a Transfer Agreement for emergency and backup services with Montefiore Medical Center 4.4 miles (14 minutes travel time) from the center.

Current Membership	
Member	Interest
Abdo Balikcioglu, MD	23.622%
Joshua Schwartz	14.626%
Robert Slingsby	14.626%
Louis Rose, MD	14.626%
Brian Haftel	10.000%
Biren Patel	10.000%
William Jones, MD	10.000%
Indira Kairam, MD	2.500%
Total	100%

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate three years from the date of the completion of the application.

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Proposed Membership	
Member	Interest
Peoples ASC, LLC	100%
Nidhi Sahgal, MD (33.34%)	
Lawrence J. Ottaviano, MD (16.665%)	
Ganga Mukkavilli, CPA (16.665%)	
Katherine Tallaj, DVM (8.3325%)	
Ines Hernandez (8.3325%)	
Alex Damiron (8.3325%)	
Paul Tallaj, MD (8.3325%)	

Financial Summary

There are no project costs associated with this application. The total purchase price for the 100% ownership interest is \$6,150,000, which will be funded via the proposed new members' personal equity. The proposed budget is as follows:

The center began operations in December 2016. The physicians at the center have performed gastroenterology and pain management procedures, as well as orthopedic, plastic, and podiatry surgeries. The incoming members intend to bring on additional specialties, including vascular, general, urology, and gynecology. The

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
	<u>Year</u>		
Revenues	\$1,712,009	\$8,855,125	\$9,740,638
Expenses	<u>\$4,130,816</u>	<u>7,835,492</u>	<u>8,317,089</u>
Net Income / Loss	(\$2,418,807)	\$1,019,633	\$1,423,549

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate three years from the date of the completion of the application, contingent upon:

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of an executed transmission and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a photocopy of an executed written consent of the members, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed certificate of amendment of the articles of organization of AMSC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed amendment of the amended and restated operating agreement of AMSC, LLC, acceptable to the Department. [CSL]
6. Submission of photocopy of an executed certificate of amendment of the articles of organization of Peoples ASC, LLC, acceptable to the Department [CSL]
7. Submission of a photocopy of an executed amended and restated operating agreement of Peoples ASC, LLC, acceptable to the Department. [CSL]
8. Submission of an amended and executed amendment of the services agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. (RNR)

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in ownership:

Member	Current	Proposed
Abdo Balikcioglu, MD	23.622%	0.000%
Joshua Schwartz	14.626%	0.000%
Robert Slingsby	14.626%	0.000%
Louis Rose, MD	14.626%	0.000%
Brian Haftel	10.000%	0.000%
William Jones, MD	10.000%	0.000%
Indira Kairam, MD	2.5000%	0.000%
Peoples ASC, LLC	0.000%	100.000%
**Nidhi Sahgal, MD (33.340%)		
**Lawrence J. Ottaviano, MD (16.665%)		
**Ganga Mukkavilli, CPA (16.665%)		
**Katherine Tallaj, DVM (8.3325%)		
**Ines Hernandez (8.3325%)		
**Alex Damiron (8.3325%)		
**Paul Tallaj, MD (8.3325%)		
TOTAL	100%	100%

***Subject to Character and Competence*

Nidhi Sahgal, MD is a Breast Surgeon and a Practicing Physician at Essen Medical Associates. She previously owned Bronx Treatment Center, an Article 28 diagnostic and treatment center, and Nidhi Sahgal MD PLLC, a Breast Surgery Practice. She was previously employed as a Breast Surgeon at 21st Century Oncology. She received her medical degree from Georgetown University School of Medicine in Washington and completed her residency in General Surgery at North Shore University Hospital. Dr. Sahgal is board certified in General Surgery.

Lawrence Ottaviano, MD is a Gastroenterologist and the proposed Medical Director. He is the Owner and President of Gramercy Park Gastroenterology, P.C. He received his medical degree from St. George's Medical School in Grenada, and is board certified in Internal Medicine and Gastroenterology. Dr. Ottaviano disclosed ownership interest in the following healthcare facility:

Gramercy Park Digestive Disease Center, LLC 2008-present

Ganga Mukkavilla is a Certified Public Accountant with years of fiscal, accounting, and tax management of professionals in the health care industry from physician providers to practices. He is the owner of Ganga V. Mukkavilli, CPA, P.C. where his responsibilities include preparing accounts and tax returns; administering payrolls and controlling income and expenditure; auditing financial information; compiling and presenting reports, budgets, business plans, and financial statements; analyzing accounts and business plans; providing tax planning services regarding current legislation; financial forecasting and risk analysis; negotiating the terms of business transactions with clients; meeting and interviewing clients, and managing staff, workloads and deadlines. He received his bachelor's degree from City University of New York, Queens College.

Ines Hernandez is the Practice Administrator for Academy Medical Care, P.C. and AW Medical Office, P.C., private medical practices, where she oversees the administrative day-to-day operations of the medical practice. She received her medical degree from Universidad Autonoma de Santo Domingo in the Dominican Republic; however, she is not licensed to practice medicine in the United States.

Alex Damirion is the current Executive Vice President of Operations and Chief of Staff of Somos Community Care, a Performing Provider System in the Medicaid DSRIP program. His responsibilities include business development and organizational design including staffing, team building, and

performance assessment. He was previously employed as the Manager of Health System Development at Mount Sinai Hospital where he presented and promoted Mount Sinai specialist services available at the hospital to medical facilities in Upper Manhattan and the Bronx. Prior to that, he was the Executive Assistant to the CEO at Corinthian Medical IPA where he assisted with the development and preparation of budgets for different projects related to the IPA and managed multiple projects as assigned by the CEO related to diverse lines of business, community, and personal interest with inter-related activities and relationships.

Katherine Tallaj, DVM is a Critical Care Specialist Veterinarian at NorthStar Veterinary Emergency Trauma & Specialty Center. She completed her Small Animal Emergency and Surgery rotating internship at Oradell Animal Hospital, her Veterinary Student Extern at VCA Brentwood in California, and her Veterinary Student Extern at the Philadelphia Zoo. She received her degree in Veterinary Medicine from Western University of Health Sciences College of Veterinary Medicine in California.

Dr. Paul Tallaj, MD is a Medical Doctor who is in his third-year residency in General Surgery at Flushing Hospital Medical Center. He received his medical degree from Universidad Iberoamericana Medical School in Santo Domingo.

Staff from the Department’s Division of Hospitals and Diagnostic & Treatment Centers (DHDTTC) reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant’s ownership interest in other health care facilities. Licensed individuals were checked against the State’s Office of Medicaid Management, Office of Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). Approval of this project will maintain access to this center’s services for the residents of Bronx County.

Financial Analysis

Operating Budget

The applicant has provided the latest current year operations and an operating budget, in 2022 dollars, for the first and third years after the change of ownership. The budget is summarized below:

	<u>Current Year</u> <u>(2020)</u>		<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2025)</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
Revenues						
Commercial FFS	\$1,983	\$237,908	\$1,968	\$1,462,184	\$1,968	\$1,607,856
Medicare FFS	\$1,544	43,220	\$1,492	435,544	\$1,492	478,932
Medicare MC	\$0	0	\$1,418	1,661,573	\$1,418	1,827,802
Medicaid FFS	\$1,617	236,043	\$1,617	405,848	\$1,617	446,292
Medicaid MC	\$0	0	\$1,405	3,574,858	\$1,406	3,932,930
Private Pay	\$1,462	271,927	\$1,442	145,653	\$1,442	160,062
All Other	\$1,242	846,073	\$1,241	1,169,465	\$1,241	1,286,764
Non-Operating Rev		<u>76,838</u>		<u>0</u>		<u>0</u>
Total Revenue		\$1,712,009		\$8,855,125		\$9,740,638

	<u>Current Year</u> <u>(2020)</u>		<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2025)</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
<u>Expenses</u>						
Operating	\$1,772	\$2,057,515	\$1,075	\$6,631,480	\$1,040	\$7,058,847
Capital	<u>\$1,786</u>	<u>2,073,301</u>	<u>\$195</u>	<u>1,204,012</u>	<u>\$185</u>	<u>1,258,242</u>
Total	\$3,558	\$4,130,816	\$1,270	\$7,835,492	\$1,225	\$8,317,089
Excess/(Deficiency) Revenues		<u>(\$2,418,807)</u>		<u>\$1,019,633</u>		<u>\$1,423,549</u>
Procedures		1,161		6,170		6,787

Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u> <u>(2020)</u>	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Commercial FFS	10.34%	12.04%	12.04%
Commercial MC	0.00%	0.00%	0.00%
Medicare FFS	2.41%	4.73%	4.73%
Medicare MC	0.00%	19.00%	18.99%
Medicaid FFS	12.58%	4.07%	4.07%
Medicaid-MC	0.00%	41.23%	41.23%
Private Pay	16.02%	1.64%	1.64%
Charity Care	0.00%	2.03%	2.03%
All Other	<u>58.66%</u>	<u>15.27%</u>	<u>15.28%</u>
Total	100.0%	100.0%	100.0%

The following is noted regarding the first- and third-year budgets:

- The shift in patient payor mix from the current year to the third year is based on low utilization of services when the facility shut down in early 2020, as a result of the Governor's Executive Order in response to the COVID-19 pandemic.
- With a different approach to the future management of the facility, the new owners anticipate bringing in more physicians that will bring in many more procedures, thereby attracting a more diverse patient and payor mix, hence the increase in Medicare MC and Medicaid MC utilization from the current year to years one and three.
- Revenue assumptions are based on prior years' actual operations, as well as, several Article 28 D&TCs operating in the same geographical location with similar square footage, specialties, and projected and/or anticipated patient flow.
- In the post-COVID environment, utilization in Years One and Three will be achieved by robust marketing plans by incoming LLC members, which include outreach to new patient markets, more physicians performing procedures at the center, and expanding the existing network of providers and third-party payors with whom the facility currently contracts. The number of procedures that have been projected for Year One following this change of ownership is comparable to the level of activity at other neighboring freestanding ambulatory surgery centers (FASCs) of similar size and scope.
- The applicant's expense and utilization assumptions are based on a review of the cost reports of other local FASCs with similar space and capacity.
- The applicant has provided physician referral letters and support for the increased utilization projections from the current year to the third year. The applicant provided the names of 14 physicians and projected utilization for year one for those physicians.

Lease Agreement

The applicant has submitted an executed assignment and assumption of lease agreement for the existing site, as summarized below.

Date:	March 5, 2021
Premises:	19,750 square feet of building at 951 Brook Avenue, Bronx, NY 10451
Landlord:	MBX Acquisition Holdings, LLC
Assignor:	ASMC, LLC
Assignee:	Peoples ASC, LLC
Term:	Ten years with a 10-year extension option
Rent:	\$950,000 Annually with a 4% annual increase
Provisions:	Tenant is responsible for Insurance, maintenance, repairs, utilities, and property taxes.

The lease agreement is an arm's length agreement, as there is no relationship between any of the principals of the landlord and the members of the applicant.

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement (MIPA), to be effectuated upon PHHPC approval as summarized below.

Date:	March 5, 2021
Buyer:	Peoples ASC, LLC
Seller/Company:	AMSC, LLC
Purchase:	Purchase 100% Membership Interest
Buyer Deliverables at Closing:	1) Assignment and assumption agreements; 2) Purchase Price; 2) Other documents, instruments, and writings reasonably requested.
Purchase Price:	\$6,150,000
Payment of Purchase Price	\$565,000 was paid on the date of execution of this agreement \$5,585,000 to be paid at closing.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 23, 2022, the facility has no outstanding liabilities.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the 100% ownership interest is \$6,150,000. The purchase price will be funded via the proposed new members' personal equity. BFA Attachment A is the proposed members' net worth summary, which indicates sufficient equity overall to fund the total purchase price. Lawrence Ottaviano has submitted a disproportionate share affidavit attesting that the incoming LLC members with liquid assets in excess of their minimum percentage obligation(s) will cover the shortfall of the members with insufficient liquid assets to meet their minimum out-of-pocket financial obligations relative to their individual percentage of ownership in this CON transaction.

The working capital requirement is estimated at \$1,305,915 based on two months of first-year expenses and will be funded via the proposed new members' personal equity. BFA Attachment B is the Pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,590,816.

BFA Attachment C is a summary of December 31, 2021, Internal Financial Statements and 2019 -2020 Certified Financial Statements for AMSC, LLC. As of December 31, 2021, the D&TC had a negative net asset position of \$758,592 and a net operating loss of \$773,592. The applicant has indicated that the

D&TC shows a reduction in the historical operating deficit and an improvement in the facility's revenue position compared to financial year 2020. In 2020, the facility had a net operating loss of \$2,418,807.

The D&TC had a positive working capital in 2019 and a negative working capital position in 2020, a negative net asset position in both 2019 and 2020, and a net operating loss of \$909,742 in 2019, and \$2,418,807 in 2020. The negative working capital, net asset, and operating loss were a result of the slow negotiations related to Medicare and Medicaid Managed care contracts and COVID interruptions in operations. The facility shut down for a period during the pandemic and patients were slow to return once the facility reopened.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

<h2>Attachments</h2>

BFA Attachment A	Net Worth Statement of Proposed New Members
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	December 31, 2021, Internals and 2019-2020 Certified Financial Statement for AMSC, LLC



Project # 221095-B
Empire CSS, LLC d/b/a Empire Center for Special Surgery

Program: Diagnostic and Treatment Center **County:** Richmond
Purpose: Establishment and Construction **Acknowledged:** April 8, 2022

Executive Summary

Description

Empire CSS, LLC d/b/a Empire Center for Special Surgery (Empire CSS), an existing New York State limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a multi-specialty Freestanding Ambulatory Surgical Center (FASC). Upon approval by the Public Health and Health Planning Council (PHHPC), Empire CSS will occupy leased space at 4855 Hylan Boulevard, Staten Island (Richmond County). The facility will consist of four operating rooms and will initially provide general surgery, gynecology, orthopedic, otolaryngology, pain management, podiatry, and urologic surgery services.

The proposed membership of Empire CSS, LLC is as follows:

Empire CSS, LLC	
Gabriel Figueroa	5%
Ornos ASC Holdings, LLC <i>Jason Kofinas, M.D (100%)</i>	95%
Total	100%

Jason Kofinas, M.D., who is board certified in Nephrology and Internal Medicine, will serve as the Center's Medical Director and Managing Member. The applicant entered into a transfer and affiliation agreement with Staten Island University Hospital which is 6.4 miles and 18 minutes from the proposed FACS.

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary

There is only one operational and one pending FASC in Richmond County. The applicant projects 4,700 procedures in Year One and 7,100 in Year Three with Medicaid at 5% and charity care at 2% each year.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary

Total project costs of \$6,676,577 will be funded from four sources: Members' equity of \$884,655 proportional to interest; a bank loan up to \$2,965,250 with a variable rate of approximately 4% during the construction period and a fixed rate at 4.5% for a term of 15 years after construction is completed; an equipment loan of up to \$2,196,627 with a fixed rate of approximately 5% for a 5-year term for which a bank letter of interest was provided; and a Tenant Improvement Allowance contribution of \$630,045.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$11,431,363	\$17,316,028
Expenses	<u>5,943,338</u>	<u>8,333,552</u>
Net Income	\$5,488,025	\$8,982,476

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed equipment loan agreement, acceptable to the Department. [BFA]
5. Submission of an executed working capital agreement, acceptable to the Department. [BFA]
6. Submission of an executed construction loan agreement, acceptable to the Department. [BFA]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **January 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **April 1, 2023**, and construction must be completed by **October 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]

3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

October 6, 2022

Need and Program Analysis

Program Description

Proposed Operator	Empire CSS, LLC
Doing Business As	Empire Center for Special Surgery
Site Address	4855 Hylan Boulevard Staten Island, New York 10312 (Richmond County)
Surgical Specialties	Multi-Specialty, including but not limited to: General Surgery Gynecology Orthopedic Otolaryngology Pain Management Podiatry Urology
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday through Saturday 7:00 am to 7:00 pm
Staffing (1st Year / 3rd Year)	21.0 FTEs / 29.0 FTEs
Medical Director(s)	Jason Kofinas, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Staten Island University Hospital 6.4 Miles / 18 minutes
On-call service	Patients who require assistance during off-hours will engage the 24-hour answering service to reach the on-call surgeon during hours when the facility is closed.

Analysis

The service area consists of Richmond County, which had a population of 495,747 in 2020 and is estimated to decline slightly to 486,008 by 2025. According to Data USA, in 2019, 96% of the population of Richmond County has health coverage as follows:

Employer Plans	57.3%
Medicaid	17.5%
Medicare	12.6%
Non-Group Plans	8.23%
Military or VA	0.347%

Currently, Richmond Pain Management ASC is the only operating ASC in Richmond County. The center opened in 2016 as a single-specialty ASC, and in 2021 converted to a multi-specialty ASC. The center had visits of 4,370 in 2019; 2,897 in 2020; and 2,615 in 2021. A second ASC, Specialty Surgery Center of Staten Island (a multi-specialty ASC) is under construction.

The applicant projects 4,700 procedures in Year One and 7,100 in Year Three with Medicaid at 5% and charity care at 2% each year. These projections are based on the current practices of participating surgeons. The applicant states that approximately 75% of the procedures are currently being performed in an office-based setting, with 20% being performed in other ASCs and the remaining 5% being performed in a hospital setting.

The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	3,166	67.36%	4,782	67.35%
Medicare FFS	1,205	25.64%	1,821	25.65%
Medicaid MC	235	5.00%	355	5.00%
Charity Care	94	2.00%	142	2.00%
Total	4,700	100.00%	7,100	100.00%

Empire CSS initially plans to obtain contracts with the following Medicaid Managed care plans: Affinity, EmblemHealth (HIP), Fidelis Care, Healthfirst PHSP, HealthPlus, Metroplus, United Healthcare Community Plan, and WellCare. The center will work collaboratively with local Federally Qualified Health Centers (FQHC) such as Beacon Christian Community Health Center and Community Health Care of Richmond to provide service to the under-insured in their service area. The FASC has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

Character and Competence

The ownership of Empire CSS, LLC is:

Member	Proposed
Gabriel Figueroa	5.00%
Ornos ASC Holdings, LLC <i>Jason Kofinas, MD (100%)</i>	95.00%
TOTAL	100%

Dr. Jason Kofina is the sole member of Ornos ASC Holdings and the proposed Medical Director of the center. He is the Associate Medical Director, Associate Tissue Bank Director, Director of Invitro Fertilization, and Director of Research at NYMHB Fertility Services PC. In these roles, he directs daily operations of the practice and tissue bank, evaluates research project proposals, approves projects, and monitors the progress of the research projects. He is also the Associate Medical Director of Manhattan Reproductive Surgery. He completed his medical degree at George Washington University in Washington DC, completed his residency in OB/Gyn at New York Presbyterian, and completed his fellowship in Reproductive, Endocrine, and Infertility at NYU Langone. Dr. Kofina is board certified in Obstetrics and Gynecology with a sub-certification in Reproductive Endocrinology and Infertility.

Gabriel Figueroa is the Chief Operating Officer and Administrator of Manhattan Reproductive Surgery Center where he is responsible for directing all provisions of services to patients and physicians within the operational, organizational, regulatory, and clinical areas. Previously, he was the Chief Operating Officer of Gramercy Healthcare Management where he was responsible for overseeing the day-to-day operations of the Ambulatory Surgery Center. He was also the Vice President of Operations of Gramercy Surgery Center where he directed, supervised, and coordinated all aspects of the business office personnel supporting eight ASC operating room operations.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State's Office of Medicaid Management, Office of Professional Medical Conduct, and Education Department databases, as well as the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the applicant plans to establish a patient referral relationship with local primary care physicians for any patient who presents themselves to the facility without a current primary care physician who can evaluate the patient before surgery and may need a physician after ASC discharge. The FASC is committed to serving all persons in need without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristics, and to the development of a formal outreach program directed to the members of the local community. The applicant had been in discussions with two home-based FQHCs, Beacon Christian Community Health Center and Community Health Care of Richmond, to establish a reciprocal patient referral relationship. The purpose of the program will be to inform the community of the benefits derived from, and the latest advances made in pain management, orthopedic surgery, and podiatry. The applicant will partner with churches and other community organizations that regularly interact with medically underserved populations including food banks, homeless shelters, and immigrant support groups. They will also develop customized outreach materials and resources to connect with targeted populations and will engage experienced consultants for professional managed care contracting support. The applicant will develop and implement an outreach strategy to secure contracts for participation in both Medicaid and national Medicare Managed Care Organization networks and other related activities. The FASC intends on using an Electronic Medical Record (EMR) program.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). Approval of the multi-specialty ambulatory surgery center will provide additional choices to the residents of Richmond County, which currently only has one operational and one pending FASC.

Financial Analysis

Total Project Costs and Financing

Total project costs are estimated at \$6,676,577 broken down as follows in 2022 dollars:

	<u>Total Project Costs</u>
New Construction	\$3,064,250
Design Contingency	297,500
Construction Contingency	148,750
Architect/Engineering Fees	225,000
Construction Manager Fees	60,000
Movable Equipment	2,745,783
Interim Interest Expense	96,785
CON Application Fee	2,000
Additional CON Processing Fee	<u>36,509</u>
Total Project Cost	\$6,676,577

The applicant's financing plan is as follows:

Cash – Member Equity	\$884,655
Construction Loan at a rate of approximately 4% for a 15-year term.	\$2,965,250
Equipment Loan 5-year at a rate of 5% fixed with a 5-year term.	\$2,196,627
Tenant Improvement Allowance	<u>\$630,045</u>
Total Project Cost	\$6,676,577

BFA Attachment A, the Net Worth Statements of the applicant members, indicates sufficient liquid resources to fund the equity requirement, which will be split proportionally among the members. In addition, Atlantic Bank submitted a letter of interest for two construction and equipment loans in the amounts of \$2,965,250 and \$2,196,627, respectively. Lastly, the landlord will provide \$630,045 toward

construction costs in equity as part of the lease agreement and has submitted an affidavit to support this commitment.

Operating Budget

The applicant submitted their first-and third-year operating budgets, in 2022 dollars, summarized below:

	<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2026)</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>				
Commercial MC	\$2,478	\$7,845,348	\$2,486	\$11,888,052
Medicare MC	\$2,496	3,007,680	\$2,501	4,554,321
Medicaid MC	\$2,461	578,335	\$2,461	873,655
Total Revenues		\$11,431,363		\$17,316,028
<u>Expenses</u>				
Operating	\$1,083.86	\$5,094,150	\$1,018.41	\$7,526,100
Capital	<u>180.68</u>	<u>849,188</u>	<u>113.83</u>	<u>807,452</u>
Total Expenses	\$1,331.86	\$5,943,338	\$1,132.24	\$8,333,552
Net Income		\$5,488,025		\$8,982,476
Utilization (Procedures)		4,700		7,100
Cost Per Procedure		\$1,265.00		\$1,173.74

With respect to the budget:

- Revenue projections are based on the current participating surgeons performing office-based procedures in an office setting.
- Volume estimates are based on participating physician referrals from physicians committed to performing procedures at the center. Most of the proposed center's patients will be referred to the center by the participating physicians and independent physicians practicing in the Staten Island and Southeast Brooklyn communities.
- Commercial rates were derived from the extensive experience of the physicians who provided commitment letters to perform procedures at the center in conducting direct payer contracting for FASCs in the NY Metro market. Consideration was given to the makeup of specialties and a median rate was applied given historical negotiated rates for the scope of procedures projected.
- Medicare rates were derived using published CMS rates for the specific geographical area.
- Medicaid rates were derived from a direct review of contracted rates with Managed Medicaid plans and the NY Medicaid Rates assigned to other similar facilities in the NY Metro Market.
- Expenses we derived using benchmarks data provided by the National and State ASC Association on current salaries, benefits, and commensurate with positions with the FASCs with the Metro Market.
- All other expenses such as medical and surgical supplies were applied to each specialty based on costs and depreciation was broken out in the budget, as well as lease expenses from the agreement.

The applicant projected first- and third-year utilization procedures based on current office-based practice experience. Projected utilization by the payor is as follows.

<u>Payor</u>	<u>Years One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2026)</u>
Commercial MC	67.36%	67.35%
Medicare MC	25.64%	25.65%
Medicaid MC	5.00%	5.00%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total Procedures	100%	100%

Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site. The terms are summarized below:

Date:	September 1, 2020
Premises:	8,530 sq. ft. located at 4855 Hyland Blvd, Staten Island, NY
Landlord:	JDK HYLAN Properties, LLC
Tenant:	Empire CSS, LLC
Term:	15 year (Renewal with a 5-year option)
Rent:	Year 1 thru 5 - \$415,857 or \$39.00 per sq. ft. Year 6 thru 10-\$447,846 or 42.00 per sq. ft. Year 11 thru 15 - \$479,835 or \$45.00 per sq. ft. Year 16 thru 20 (Renewal Term) \$48.00 per sq. ft.
Provisions:	Tenant shall be responsible for repairs; electricity; heating and air conditioning and cleaning of demised premises. Additionally, the landlord will provide a tenant improvement allowance of \$630,045.

The lease agreement is a non-arm's length agreement, meaning there is a relationship between the two parties. Dr. Jason Kofinas, the sole member of Ornos ASC Holdings, LLC, is the Managing Member of Empire CSS, LLC. Empire CSS, LLC entered into a lease with JDK HYLAN Properties, LLC, which has common ownership of the property. The applicant submitted two letters of rent reasonableness from NYS Licensed realtors.

Billing Services Agreement

The applicant has submitted an executed billing and service agreement, to be effective upon PHHPC approval of the application. The terms of the agreement are summarized below.

Consultant:	Liberty Health Partners, LLC
Operator:	Empire CSS, LLC
Services:	Response to inquiries; referrals to collection agents; reports; safeguarding records; ensuring qualified personnel and compliance with laws; audit rights;
Term:	3 years from the effective date and will automatically renew unless either party decides not to continue the agreement. Either party must give a 90-day notice of termination.
Fee:	\$56,400 annually plus a \$30 flat fee per bill collected and paid monthly.

Empire CSS, LLC shall retain all reserve powers and full authority over all decisions recommended by the Billing Services agreement. Gabriel Figueroa is the sole member of Liberty Healthy Partners, LLC.

Development and Administrative Service Agreement

The applicant has submitted an executed Administrative Service Agreement (ASA) agreement, to be effective upon PHHPC approval of this application. The terms of the agreement are summarized below.

Consultant:	Liberty Health Partners, LLC
Operator:	Empire CSS, LLC
Services:	Liberty will ensure all workers are provided sufficient working space; all medical care providers and physicians are duly licensed to provide services delivered; development and administrative services; measure performance standards to be efficient in operations; ensure regulatory matters are up to code;
Term:	3 years from the effective date and will automatically renew unless either party decides not to continue the agreement. Either party must give a 30-day notice of termination.
Fee:	\$7,500 per month before the completion of the construction and \$25,000 per month upon completion of the AAAHC survey. \$20,000 per month for administrative services fee.

Empire CSS, LLC shall retain all reserve powers and full authority over all decisions recommended by the Development and Administrative agreement. Gabriel Figueroa is the sole member of Liberty Healthy Partners, LLC.

Capability and Feasibility

Total project costs of \$6,676,577 will be funded through four sources: Members' equity of \$884,655 split proportionally by membership interest; a construction bank loan of up to \$2,965,250; an equipment loan of up to \$2,196,627; and a Tenant Improvement Allowance of \$630,045 from the landlord. Atlantic Bank of New York submitted an LOI for two loans: a construction loan of \$2,965,250, at a rate of approximately 4% for a 15-year term, and an equipment loan of \$2,196,627 at a fixed rate of 5% for a 5-year term.

Working capital requirements estimated at \$1,388,925 are based on two months of third-year expenses. The working capital will be funded through bank financing of \$669,846 at a fixed rate of 4% for a term of 5 years term and \$719,079 from members' equity. Atlantic Bank of New York submitted an LOI for working capital financing. BFA Attachment A shows that the members have sufficient liquid resources to cover their contribution to equity which will be split proportionally by their membership interest percent.

BFA Attachment B is a pro forma balance sheet for Empire CSS, LLC, which shows operations will start with \$2,193,379 in members' equity on the first day of operations.

The submitted budget for Years One and Three estimates a net income of \$5,488,025 and \$8,982,476, respectively. Revenue and volume projections are based on the current participating surgeons performing office-based procedures in an office setting who are committed to performing procedures at the center. The budget appears reasonable.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Supplemental Information

DOH Comment

The Department reached out to proximate hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC). None of the hospitals submitted an objection.

Attachments

BHFP Attachment	Map
BFA Attachment A	Members' Net Worth Statements
BFA Attachment B	Pro Forma Balance Sheet



Project # 221224-E
21 Reade Place ASC, LLC d/b/a Bridgeview Endoscopy

Program: Diagnostic and Treatment Center **County:** Dutchess
Purpose: Establishment **Acknowledged:** July 13, 2022

Executive Summary

Description

21 Reade Place ASC, LLC, d/b/a Bridgeview Endoscopy (Bridgeview or the Center), an existing single-specialty (gastroenterology) freestanding ambulatory surgery center (FASC) at 21 Reade Place, Poughkeepsie, seeks approval to transfer 41.6665% membership interest from seven existing members to five new members of KVBDA, LLC, the sole member of 21 Reade Place ASC, LLC.

A full certificate of need application is required to effectuate the transfers of interest under PHL Section 2801-a(4)(b)(ii)(D) because the total percentage of interest being transferred in the operator is greater than twenty-five percent.

The membership after approval of this application is shown below:

Members	Current	Proposed
Sunil K. Khurana, MD	14.28666%	8.33333%
Salvatore Buffa, MD	14.28666%	8.33333%
Peter Varunok, MD	14.28666%	8.33333%
Robert Dean, MD	14.28666%	8.33333%
Khurram Ashraf, DO	14.28666%	8.33333%
Farshad Elmi, MD	14.28666%	8.33333%
Zana Nikolla, MD	14.28666%	8.33333%
Farahnaz Toyerskani, MD	0.0000%	8.33333%
Simona Meca, MD	0.0000%	8.33333%
Madhavi Gaddam, MD	0.0000%	8.33333%
Tamer Sargios, MD	0.0000%	8.33333%
Elizabeth Williams, DO	0.0000%	8.33333%
Total	100%	100%

The center began operations in July 2014 with two procedure rooms. There are no programmatic changes as a result of this request. The applicant is current with their

SPARCS reporting. The Center has a hospital transfer agreement with Vassar Brothers Medical Center, which is located next to the Center. Sunil K. Khurana MD will continue to serve as the Medical Center Director and managing member of the Center.

The existing lease dated March 2023, between Vassar Brothers Hospital d/b/a Vassar Brothers Medical Center and 21 Reade Place ASC, LLC will continue unchanged. The applicant uses contract employees, many for physician staff and others from SKK Management, LLC, which will continue.

**OPCHSM Recommendation
Approval**

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary

There are no project costs associated with this application. Four of the five new physician members will pay \$244,800 each for their 8.3333% membership interest. The remaining additional member, Dr. Elizabeth Williams, purchased and paid for her membership interest through a joinder agreement executed in 2019 for \$250,000.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by **one** year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed changes in the membership of KVBD, LLC, the sole member of 21 Reade Place ASC, LLC:

Member	Current	Proposed
Sunil K. Khurana, MD	14.2866%	8.3333%
Salvatore Buffa, MD	14.2866%	8.3333%
Peter Varunok, MD	14.2866%	8.3333%
Robert Dean, MD	14.2866%	8.3333%
Khurram Ashraf, D.O.	14.2866%	8.3333%
Farshad Elmi, MD	14.2866%	8.3333%
Zana Nikolla, MD	14.2866%	8.3333%
Farahnaz Toyerskani, MD**	0.0000%	8.3333%
Simona Meca, MD**	0.0000%	8.3333%
Madhavi Gaddam, MD**	0.0000%	8.3333%
Tamer Sargios, MD**	0.0000%	8.3333%
Elizabeth Williams, DO**	0.0000%	8.3333%
Total	100%	100%

***Members Subject to Character and Competence*

Dr. Madhavi Gaddam is a Gastroenterologist at Premier Medical Group of the Hudson Valley and is a Staff Gastroenterologist at Mid-Hudson Regional Hospital and Vassar Brothers Medical Center. He was previously an Attending Gastroenterology Physician at Lincoln Medical And Mental Health Center and a Gastroenterologist at Digestive Disease Center of the Hudson Valley for 16 years. Dr. Gaddam completed his medical degree at Rangaraya Medical College in India, his residency in Internal Medicine and fellowship in Gastroenterology at Bronx Lebanon Hospital, and his Liver Transplant rotation at Westchester Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Simona Meca is a Gastroenterologist at Premier Medical Group of the Hudson Valley. She was previously employed as a Gastroenterologist at the Digestive Disease Center of the Hudson Valley. Dr. Meca received her medical degree from the University of Medicine Carol Davila in Romania, completed her residency in Internal Medicine at Long Island Jewish Medical Center, and her fellowship in Gastroenterology at the University of Buffalo. She is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Tamer Sargios is a Gastroenterologist at Premiere Medical Group of Hudson Valley and a Staff Gastroenterologist at Mid-Hudson Regional Hospital and Vassar Brothers Medical Center. He is the Associate Chief of Gastroenterology and Hepatobiliary Diseases at Mid-Hudson Regional Hospital and the Assistant Clinical Professor of Internal Medicine of NY Medical College. He was previously a Gastroenterologist at the Digestive Disease Center of the Hudson Valley, a Staff Gastroenterologist at King's Daughters Medical Center and Our Lady of Bellefonte Hospital, and an Instructor of Medicine at Albert Einstein College of Medicine. Dr. Sargios received his medical degree from Ain Shams University in Egypt and completed his residency in Internal Medicine and fellowship in Digestive Diseases at Beth Israel Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Sargios discloses ownership interest in the following healthcare facilities:

Hudson Valley Endoscopy Center *09/2009-12/2019*

Dr. Farahnaz Toyerskani is a Gastroenterologist at Premier Medical Group of Hudson Valley. He was previously a Gastroenterologist at the Digestive Disease Center of the Hudson Valley. Dr. Toyerskani received his medical degree from the Tehran University of Medical Sciences in Iran, completed his residency in Internal Medicine at New York Methodist Hospital, and his fellowship in Gastroenterology at

the University of Arkansas for Medical Sciences. He discloses ownership interest in the following healthcare facility:

Hudson Valley Endoscopy Center

09/2009-12/2019

Dr. Elizabeth Williams is a Gastroenterologist at Premier Medical Group of the Hudson Valley and is affiliated with Mid-Hudson Regional Hospital. She received her medical degree from the University of New England College of Osteopathic Medicine and completed her residency in Internal Medicine and Gastroenterology and Hepatology fellowship at Minneola University Hospital. Dr. Williams is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State Office of Medicaid Management, Office of Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Analysis

Joinder Agreement

The applicant has submitted the executed Joinder Agreement for the proposed members, the terms of which are summarized below:

Date:	January 11, 2022
Description:	Purchase of 8.333% of the membership interest
Company:	KVBDA, LLC
Purchasers:	Tamer Sargios, MD, Madhavi Gaddam, MD, Farahnaz Toyserkani, MD, Simon Meca, MD, Elizabeth Williams, DO*
Purchase Price:	\$244,800 per proposed new member
Payment of Purchase Price:	All the proposed members will pay from personal equity resources.

**Dr. Elizabeth Williams purchased and paid for her membership interest through a joinder agreement executed in 2019 for \$250,000*

Capability and Feasibility

There are no project costs associated with this application. All membership interests will be identical for both KVBDA, LLC and 21 Reade Place ASC, LLC. Four out of five new members will pay \$244,800 for their 8.3333% membership interest totaling \$979,200. The additional member, Dr. Elizabeth Williams, purchased and paid for her membership interest through a joinder agreement executed in 2019 for \$250,000. The remaining four new physician members will fulfill their purchase price through equity from the proposed members' cash resources, as shown in BFA Attachment A. The applicant states that payments from incoming members will be distributed proportionately to the existing members.

A review of BFA Attachment B, the 2020 Certified Financial Statement, and the full year 2021 Financial Statement shows a positive working capital position and equity position, and that the Center achieved a net income of \$2,849,418 and \$4,106,751, respectively. Internal Financial Statements as of March 31, 2022, show a positive working capital and equity position and the facility achieved a net income of \$1,192,905, thus reinforcing healthy operations.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

<h2>Attachments</h2>

BFA Attachment A	Net Worth Statement Proposed Members
BFA Attachment B	2020 Certified Financial Statements, 2021 Annual Financial Statements, and March 31, 2022, Internal Financial Statements for 21 Reade Place ASC, LLC



**Project # 221267-E
Advanced Endoscopy LLC d/b/a
Advanced Endoscopy Center**

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment **Acknowledged:** July 14, 2022

Executive Summary

Description

Advanced Endoscopy Center, LLC (AEC or the Center), an existing single-specialty (gastroenterology) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 5500 Broadway, Suite A, Bronx (Bronx County), is seeking approval to transfer 10.71213% membership interest in the Center to PE Healthcare Associates, LLC (PEHA).

AEC's current ownership consists of three member classes:

- Class A: 13 physician members (60.2%)
- Class B: three non-physician members (10.7%)
- Class C: MMC GI Holdings West, Inc., a not-for-profit entity with Montefiore Medical Center as its passive sole corporate member (29.1%)

The application is a legal restructuring and there are no new individuals associated with the ownership of the Center. Upon approval of this project, AEC's Class A and Class C membership remain the same. The three existing individual Class B members of AEC will transfer their entire membership interest in the Center (10.71213% combined) to PEHA. PEHA has three members, the current individual Class B members of AEC.

The Center, which has five procedure rooms, began operations in May 2007 and is current with its SPARCS reporting. There will be no

change in services, location or location served. David Stein, M.D is the current medical director and will remain as the medical director.

This application is being processed concurrently by the Department with five other PEHA ownership change applications. Upon approval by PHHPC, PEHA will have membership interests in 16 FASCs in New York State.

**OPCHSM Recommendation
Approval**

Need Summary
There will be no need review per Public Health Law §2801-a (4).

Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary
There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A MEMBERS		
David Stein	4.63061%	4.63061%
Isadore Gutwein	4.63061%	4.63061%
Robert Sable	4.63061%	4.63061%
Ira Tepler	4.63061%	4.63061%
Henry Katz	4.63061%	4.63061%
Michael Ader	4.63061%	4.63061%
Albert Kramer	4.63061%	4.63061%
Ammon Gotian	4.63061%	4.63061%
Dan Reich	4.63061%	4.63061%
Jeremy Gutwein	4.63061%	4.63061%
Ian Hamik	4.63061%	4.63061%
Neil Herbsman	4.63061%	4.63061%
Jonathan Rieber	4.63061%	4.63061%
CLASS B MEMBERS		
Barry Tanner	3.75897%	0.00000%
Christina Morrison	3.47658%	0.00000%
David Young	3.47658%	0.00000%
PE Healthcare Associates, LLC ***Barry Tanner (48%) ***David Young (26%) ***Christina Morrison (26%)	0.00000%	10.71213%
CLASS C MEMBERS		
MMC GI Holdings West, Inc	29.08888%	29.08888%
Total	100%	100%

***Subject to Character and Competence

PE Healthcare Associates, in accordance with the terms of the Center's Operating Agreement, proposes to appoint Lara Jordan as an outside manager to serve on the Center's Board of Managers.

Lara Jordan is the Vice President of Operations of PE GI Solutions where she has oversight of operations of nine GI and one multispecialty ASC. She was previously employed as the Vice President of Operations of Ambulatory Surgery Centers of America where she had oversight of five ASCs.

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2021-present</i>
<i>Island Digestive Health</i>	<i>02/2021-present</i>

<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Advanced Surgery Center of Long Island</i>	<i>10/2021-present</i>
<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
<i>Putnam Gastroenterology</i>	<i>10/2021-present</i>
<i>Queens Endoscopy ASC</i>	<i>10/2021-present</i>
<i>Yorkville Endoscopy</i>	<i>10/2021-present</i>

William “Barry” Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO’s discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

<i>Atlantic Gastro Surgicenter</i>	<i>11/2016-present</i>
<i>Augusta Endoscopy Center</i>	<i>12/2010-present</i>
<i>Berks Center for Digestive Health</i>	<i>12/2001-present</i>
<i>Bethesda Endoscopy Center</i>	<i>11/2018-present</i>
<i>Burlington County Endoscopy Center</i>	<i>11/2008-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>03/2005-present</i>
<i>Central Arizona Endoscopy</i>	<i>12/2006-present</i>
<i>Central Jersey ASC</i>	<i>06/2017-present</i>
<i>Dekalb Endoscopy Center</i>	<i>12/2015-present</i>
<i>DHA Endoscopy</i>	<i>08/2012-present</i>
<i>Digestive Disease Endoscopy Center</i>	<i>08/2012-present</i>
<i>Digestive Disease & Endoscopy Center</i>	<i>03/2020-present</i>
<i>Digestive Health Specialist Endoscopy Ctr</i>	<i>10/2018-present</i>
<i>East Side Endoscopy</i>	<i>01/2012-present</i>
<i>The Endoscopy Center at Bainbridge</i>	<i>10/2007-present</i>
<i>University Suburban Endoscopy Ctr</i>	<i>03/2021-present</i>
<i>Emerson Endoscopy and Digestive Health Ctr</i>	<i>03/2021-present</i>
<i>Endoscopy Associates of Valley Forge</i>	<i>08/2018-present</i>
<i>Endoscopy Center at Robinwood</i>	<i>05/2012-present</i>
<i>Endoscopy Center at St. Mary’s</i>	<i>12/2016-present</i>
<i>Endoscopy Center of Bucks County</i>	<i>01/2013-present</i>
<i>Endoscopy Center of Niagara</i>	<i>03/2014-present</i>
<i>Endoscopy Center of West Central Ohio</i>	<i>04/2015-present</i>
<i>Endoscopy Center of Western New York</i>	<i>03/2004-present</i>
<i>Eastside Endoscopy Center</i>	<i>06/2005-present</i>
<i>EEC-Issaquah</i>	<i>02/2012-present</i>
<i>Elgin Gastroenterology Center</i>	<i>09/2012-present</i>
<i>Fredericksburg Endoscopy</i>	<i>02/2020-present</i>
<i>Garden State Endoscopy and Surgery Ctr</i>	<i>05/2015-present</i>
<i>Gastrointestinal Endoscopy Center</i>	<i>09/2018-present</i>
<i>Island Digestive Health Center</i>	<i>04/2014-present</i>
<i>Kalamazoo Endo Center</i>	<i>05/2009-present</i>
<i>Laredo Digestive Health Center</i>	<i>05/2009-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2006-present</i>
<i>Michigan Endoscopy Center</i>	<i>02/2013-present</i>
<i>Michigan Endoscopy Center at Providence Park</i>	<i>12/2013-present</i>
<i>Northern New Jersey for Advanced Endoscopy</i>	<i>03/2016-present</i>
<i>Northwest Endoscopy Center</i>	<i>06/1994-present</i>
<i>PGC Endoscopy Center for Excellence</i>	<i>02/2015-present</i>
<i>Princeton Endoscopy Center</i>	<i>01/2022-present</i>

<i>S. Broward Endoscopy</i>	<i>06/2015-present</i>
<i>Surgical Centers of Michigan</i>	<i>06/2016-present</i>
<i>UH North Ridgeville Endoscopy Center</i>	<i>05/2019-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>08/2017-present</i>
<i>Lone Star Endoscopy</i>	<i>04/2006-present</i>
<i>Lone Star Endoscopy Satellite Office 1</i>	<i>09/2014-present</i>
<i>Lone Star Endoscopy Satellite Office 2</i>	<i>10/2017-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>2017-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>04/2013-present</i>
<i>Liberty Endoscopy</i>	<i>02/2017-present</i>
<i>Advanced Surgery Center</i>	<i>02/2012-present</i>
<i>Manhattan Endoscopy Center</i>	<i>2017-present</i>
<i>Putnam Gastroenterology</i>	<i>12/2010-present</i>
<i>Queens Endoscopy ASC</i>	<i>2017-present</i>
<i>Yorkville Endoscopy</i>	<i>08/2012-present</i>
<i>Endo-surgical Center of Florida</i>	<i>05/2010-09/2014</i>
<i>AZ West Endoscopy Center</i>	<i>2010-2019</i>
<i>Greater Gaston Endoscopy Center</i>	<i>10/2014-08/2019</i>
<i>Delmarva Endoscopy Center</i>	<i>07/2019-07/2020</i>
<i>Flushing Endoscopy Center</i>	<i>2011- 2021</i>
<i>Queens Boulevard ASC</i>	<i>2010-2021</i>
<i>West Side GI</i>	<i>2012-2020</i>
<i>Hudson Valley Center for Digestive Health</i>	<i>07/2012-04/2018</i>
<i>AMSC</i>	<i>12/2016-06/2018</i>
<i>Mulberry ASC</i>	<i>08/2016-present</i>
<i>Chesapeake Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Columbia Surgery Center</i>	<i>04/2022-present</i>
<i>Bergman Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Baltimore Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Carroll County Eye Surgery</i>	<i>04/2022-present</i>
<i>The Surgery Center</i>	<i>04/2022-present</i>
<i>Eyes of York Surgery Center</i>	<i>04/2022-present</i>
<i>NEI ASC</i>	<i>04/2022-present</i>
<i>Pennsylvania Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Ophthalmic Associates Surgery and Laser Ctr</i>	<i>04/2022-present</i>
<i>Surgery Specialty Center of Northeastern PA</i>	<i>04/2022-present</i>
<i>Denali United</i>	<i>01/22-present</i>
<i>Pearl Road Surgery Center</i>	<i>2019-present</i>
<i>PET Imaging VI</i>	<i>09/2019-present</i>
<i>PET Imaging VIII</i>	<i>09/2019-present</i>
<i>PET Imaging IX</i>	<i>09/2019-present</i>
<i>PET Imaging XII</i>	<i>09/2019-present</i>
<i>PET Imaging XVII</i>	<i>09/2019-present</i>

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2020-present</i>
<i>Island Digestive Health Center</i>	<i>02/2021-present</i>

<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Long Island Digestive Endoscopy</i>	<i>10/2021-present</i>
<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
<i>Putnam Gastroenterology</i>	<i>10/2021-present</i>
<i>Yorkville Endoscopy</i>	<i>10/2021-present</i>

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State's Office of Medicaid Management, Office of Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Membership Interest Transfer Agreement

The applicant has submitted three executed Membership Interest Transfer Agreements for the proposed members, the terms of which are summarized below:

Date:	12/21/2021
Description:	Transfer a combined 10.71213% ownership interest of three Class B members in AEC to PEHA
Transferors:	Barry Tanner, Christina Morrison, and David Young
Transferee:	PE Health Care Associates, LLC
Purchase Price:	\$0
Percentage Interest:	Barry Tanner (3.75897%), Christina Morrison (3.47658%), and David Young (3.47658%)
Total Transfer:	PE HealthCare Associates, LLC (10.71213%)

Capability and Feasibility

There are no project costs associated with this application. There is no purchase price for the transfer of 10.71213% Class B membership interest in the Center to PE Healthcare Associates, LLC (PEHA).

As shown in BFA Attachment A, AEC had an average positive working capital position and a positive net asset position in 2020 and 2021. The Center achieved a net income of \$2,945,930 and \$6,724,524, in 2020 and 2021, respectively. The facilities' financial statements reflect strong financial performance.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A | Financial Summary – 2020 and 2021 Certified Financial Statements for AEC



**Project # 221268-E
Carnegie Hill Endoscopy, LLC**

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: New York
Acknowledged: July 14, 2022

Executive Summary

Description

Carnegie Hill Endoscopy, LLC (CHE or the Center), an existing single-specialty (gastroenterology) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 1516 Lexington Avenue, New York, New York 10029 is seeking approval to transfer an 18.66% Class B membership interest in the Center to PE Healthcare Associates, LLC (PEHA).

CHE's current ownership consists of three member classes:

- Class A has 21 physician owners and one entity owner (74%)
- Class B has three non-physician members consisting of (19%)
- Class C is Mount Sinai Ambulatory Ventures, Inc. (7%), a wholly-owned subsidiary of Mount Sinai Health System.

This application is a legal restructuring and there are no new individuals associated with the ownership. Upon approval of this project, CHE's Class A and Class C membership remain the same. The three existing individual Class B members of CHE (Barry Tanner, Christina Morrison, and David Young) will transfer their entire membership interest in the Center (18.66% combined) to PEHA. PEHA has three members, each of whom is currently an individual member of CHE, with the following ownership: Barry Tanner (48.0%); David Young (26.0%); and Christina Morrison (26.0%). PEHA's ownership structure will not change as a result of this project.

The Center, which has five procedure rooms, began operations in March 2012 and is current with its SPARCS reporting. There will be no change in services or location as a result of this application. Blair Lewis, MD is the current medical director and will remain as the medical director.

This application is being processed concurrently by the Department with five other PEHA ownership change applications. Upon approval by PHHPC, PEHA will have membership interests in 16 FASCs in New York State.

**OPCHSM Recommendation
Approval**

Need Summary
There will be no need review per Public Health Law §2801-a (4).

Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary
There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A MEMBERS		
Angie Eng, MD	4.55%	4.55%
Anthony Weiss, MD	3.21%	3.21%
Asher Kornbluth, MD	1.87%	1.87%
Audrey Woolrich, MD	1.47%	1.47%
Barry Jaffin, MD	3.54%	3.54%
Blair Lewis, MD	7.69%	7.69%
Bradley Connor, MD	3.01%	3.01%
Charles Saha, MD	1.83%	1.83%
David Berman, MD	1.98%	1.98%
James George, MD	4.67%	4.67%
Jeffrey Loria, MD	3.07%	3.07%
LH& DG Holding Company, LLC Dov Z. Grant, MD (40%) Lawrence Herman, MD (60%)	5.49%	5.49%
Moshe Rubin, MD	2.02%	2.02%
Paul Miskovitz, MD	1.90%	1.90%
Paul Basuk, MD	3.28%	3.28%
Peter Chang, MD	4.82%	4.82%
Peter Legnani, MD	4.95%	4.95%
Robert Cooper, MD	2.96%	2.96%
Ron Palmon, MD	3.90%	3.90%
Susan Lucak, MD	1.74%	1.74%
Steven Naymagon, MD	1.57%	1.57%
Jennifer Bonheur, MD	4.79%	4.79%
CLASS B MEMBERS		
Barry Tanner	6.22%	0.00%
Christina Morrison	6.22%	0.00%
David Young	6.22%	0.00%
PE Healthcare Associates, LLC ***Barry Tanner (48.00%) ***David Young (26.00%) ***Christina Morrison (26.00%)	0.00%	18.13%
CLASS C MEMBER		
Mount Sinai Ambulatory Ventures	7.01%	7.01%
Total	100%	100%

***Subject to Character and Competence

PE Healthcare Associates, LLC, in accordance with the terms of the Center's Operating Agreement, proposes to appoint Robert Estes as an outside manager to serve on the Center's Board of Managers.

Robert Estes is the Senior Vice President of Operations of Physicians Endoscopy LLC. He is responsible for outside oversight of administrators for all operational activities, growth, and strategic planning, and acting as a liaison between the company and its partners.

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2021-present</i>
<i>Island Digestive Health</i>	<i>02/2021-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Advanced Surgery Center of Long Island</i>	<i>10/2021-present</i>
<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
<i>Putnam Gastroenterology</i>	<i>10/2021-present</i>
<i>Queens Endoscopy ASC</i>	<i>10/2021-present</i>
<i>Yorkville Endoscopy</i>	<i>10/2021-present</i>

William “Barry” Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO’s discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

<i>Atlantic Gastro Surgicenter</i>	<i>11/2016-present</i>
<i>Augusta Endoscopy Center</i>	<i>12/2010-present</i>
<i>Berks Center for Digestive Health</i>	<i>12/2001-present</i>
<i>Bethesda Endoscopy Center</i>	<i>11/2018-present</i>
<i>Burlington County Endoscopy Center</i>	<i>11/2008-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>03/2005-present</i>
<i>Central Arizona Endoscopy</i>	<i>12/2006-present</i>
<i>Central Jersey ASC</i>	<i>06/2017-present</i>
<i>Dekalb Endoscopy Center</i>	<i>12/2015-present</i>
<i>DHA Endoscopy</i>	<i>08/2012-present</i>
<i>Digestive Disease Endoscopy Center</i>	<i>08/2012-present</i>
<i>Digestive Disease & Endoscopy Center</i>	<i>03/2020-present</i>
<i>Digestive Health Specialist Endoscopy Ctr</i>	<i>10/2018-present</i>
<i>East Side Endoscopy</i>	<i>01/2012-present</i>
<i>The Endoscopy Center at Bainbridge</i>	<i>10/2007-present</i>
<i>University Suburban Endoscopy Ctr</i>	<i>03/2021-present</i>
<i>Emerson Endoscopy and Digestive Health Ctr</i>	<i>03/2021-present</i>
<i>Endoscopy Associates of Valley Forge</i>	<i>08/2018-present</i>
<i>Endoscopy Center at Robinwood</i>	<i>05/2012-present</i>
<i>Endoscopy Center at St. Mary’s</i>	<i>12/2016-present</i>
<i>Endoscopy Center of Bucks County</i>	<i>01/2013-present</i>
<i>Endoscopy Center of Niagara</i>	<i>03/2014-present</i>
<i>Endoscopy Center of West Central Ohio</i>	<i>04/2015-present</i>
<i>Endoscopy Center of Western New York</i>	<i>03/2004-present</i>
<i>Eastside Endoscopy Center</i>	<i>06/2005-present</i>
<i>EEC-Issaquah</i>	<i>02/2012-present</i>
<i>Elgin Gastroenterology Center</i>	<i>09/2012-present</i>

<i>Fredericksburg Endoscopy</i>	<i>02/2020-present</i>
<i>Garden State Endoscopy and Surgery Ctr</i>	<i>05/2015-present</i>
<i>Gastrointestinal Endoscopy Center</i>	<i>09/2018-present</i>
<i>Island Digestive Health Center</i>	<i>04/2014-present</i>
<i>Kalamazoo Endo Center</i>	<i>05/2009-present</i>
<i>Laredo Digestive Health Center</i>	<i>05/2009-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2006-present</i>
<i>Michigan Endoscopy Center</i>	<i>02/2013-present</i>
<i>Michigan Endoscopy Center at Providence Park</i>	<i>12/2013-present</i>
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<i>Northwest Endoscopy Center</i>	<i>06/1994-present</i>
<i>PGC Endoscopy Center for Excellence</i>	<i>02/2015-present</i>
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<i>S. Broward Endoscopy</i>	<i>06/2015-present</i>
<i>Surgical Centers of Michigan</i>	<i>06/2016-present</i>
<i>UH North Ridgeville Endoscopy Center</i>	<i>05/2019-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>08/2017-present</i>
<i>Lone Star Endoscopy</i>	<i>04/2006-present</i>
<i>Lone Star Endoscopy Satellite Office 1</i>	<i>09/2014-present</i>
<i>Lone Star Endoscopy Satellite Office 2</i>	<i>10/2017-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>2017-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>04/2013-present</i>
<i>Liberty Endoscopy</i>	<i>02/2017-present</i>
<i>Advanced Surgery Center</i>	<i>02/2012-present</i>
<i>Manhattan Endoscopy Center</i>	<i>2017-present</i>
<i>Putnam Gastroenterology</i>	<i>12/2010-present</i>
<i>Queens Endoscopy ASC</i>	<i>2017-present</i>
<i>Yorkville Endoscopy</i>	<i>08/2012-present</i>
<i>Endo-surgical Center of Florida</i>	<i>05/2010-09/2014</i>
<i>AZ West Endoscopy Center</i>	<i>2010-2019</i>
<i>Greater Gaston Endoscopy Center</i>	<i>10/2014-08/2019</i>
<i>Delmarva Endoscopy Center</i>	<i>07/2019-07/2020</i>
<i>Flushing Endoscopy Center</i>	<i>2011-2021</i>
<i>Queens Boulevard ASC</i>	<i>2010-2021</i>
<i>West Side GI</i>	<i>2012-2020</i>
<i>Hudson Valley Center for Digestive Health</i>	<i>07/2012-04/2018</i>
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<i>PET Imaging VI</i>	<i>09/2019-present</i>
<i>PET Imaging VIII</i>	<i>09/2019-present</i>
<i>PET Imaging IX</i>	<i>09/2019-present</i>
<i>PET Imaging XII</i>	<i>09/2019-present</i>
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David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

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<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Long Island Digestive Endoscopy</i>	<i>10/2021-present</i>
<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
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Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Membership Interest Transfer Agreement

The applicant has submitted three executed Membership Interest Transfer Agreements for the proposed members, the terms of which are summarized below:

Date:	12/21/2021
Description:	Transfer a combined 18.66% ownership interest of Class B members in CHE to PEHA.
Transferors:	Barry Tanner, Christina Morrison, and David Young
Transferee:	PE Healthcare Associates, LLC
Purchase Price:	\$0
Percentage Interest:	Barry Tanner (6.22%); Christina Morrison (6.22%); and David Young (6.22%)
Total Transfer:	PE Healthcare Associates (18.66%)

Capability and Feasibility

There are no costs associated with this application. The exchange of 18.66% Class B membership interest from the three individuals to PE Healthcare Associates, LLC is being transferred at no cost.

Carnegie Hill Endoscopy had an average positive working capital position and an average positive net asset position in 2020 and 2021 as shown in BFA Attachment A. The entity achieved income from operations of \$8,489,486 and \$14,423,769 in 2020 and 2021, respectively. The facility's financial statements have reflected strong financial performance. The applicant has indicated that the reason for the cash balance decrease was due to a large contract/billing issue with Blue Cross/Blue Shield that started in late 2020. In early 2022, the Center received this disputed amount of cash in the settlement of these issues. The reason for the increase in accounts receivable from 2020 to 2021 is that the increase was due to utilization increasing during the same period. In addition, the Center's Accounts Receivable balance was inflated during 2021 as a result of the Blue Cross/Blue Shield outlined above that were not satisfied until Quarter One of 2022.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	2020 and 2021 Certified Financial Statements of Carnegie Hill Endoscopy, LLC
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Project # 221269-E
East Side Endoscopy, LLC d/b/a
East Side Endoscopy and Pain Management Center

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment **Acknowledged:** July 14, 2022

Executive Summary

Description

East Side Endoscopy, LLC (ESNY), an existing dual-single-specialty (gastroenterology and pain management) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 380 Second Avenue, Concourse A, New York, New York, is seeking approval to transfer 40.3648% membership interest from three withdrawing Class B members and an additional 1.5612% membership interest distributed from withdrawing Class A members (collectively 41.9260%) to PE Healthcare Associates, LLC (PEHA). In addition, the ownership interest is being transferred from two withdrawing members to existing members within two member LLCs and 9.306% is being transferred from an existing member to a new member within a member LLC.

ESNY's current membership consists of three member classes:

- Class A: eight physician owners and three physician-owned LLCs (42.3572%)
- Class B: three non-physician members (40.3648%)
- Class C: Mount Sinai Ambulatory Ventures, Inc. (17.2779%), a not-for-profit entity that is a wholly-owned subsidiary of Mount Sinai Health System.

Upon approval of the proposed transaction, there will be:

- Class A: eight physician owners and three physician-owned LLCs (40.1266%)
- Class B: a non-physician-owned LLC whose members are the current Class B individual

members (41.926%)

- Class C: Mount Sinai Ambulatory Ventures, Inc. (17.946%), a not-for-profit entity that is a wholly-owned subsidiary of Mount Sinai Health System.

In summary, three Class B members are transferring their interests to an existing LLC of which they are the three members. Additionally, two individuals are leaving the ownership and a new individual is joining. A before and after listing of operator membership is included in the Program Analysis section.

The Center, which has four procedure rooms, began operations in January 2010 providing gastroenterology surgery services, later adding pain management as a second specialty. ESNY is current with its SPARCS reporting. There will be no change in services or location served associated with this application. Brett Bernstein, MD, a Class A member, who is board-certified in Internal Medicine and Gastroenterology, will continue to serve as the Center's Medical Director. The Center will continue to have a Hospital Transfer Agreement with Mount Sinai Beth Israel, which is located 0.6 miles and 4 minutes travel time from the Center.

This application is being processed concurrently by the Department with five other FASC membership change applications. Upon approval of these applications by PHHPC, PEHA will have membership interests in 16 FASCs in New York State.

OPCHSM Recommendation
Approval

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary

There are no project costs associated with this application. Dr. Kasmin and Dr. Siegel will redeem their combined 3.6516% indirect interest in ESNY within class A membership for \$954,672. ESNY will fund the combined purchase price of \$954,672 via accumulated cash. Dr. Sanghavi's purchase price of \$261,457 for the acquisition of 9.3060% membership interest in Gramparknorth, LLC will be funded via his personal resources.

Operating budget projections are not included as part of this transaction as it is limited to a change in membership with no changes in services offered or location served.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member /Class	Current	Proposed
CLASS A MEMBERS		
Howard Antosofsky, M.D	3.8380%	3.9860%
Larry Attia, MD	3.2553%	3.3810%
Michael Blechmand, MD	5.1423%	5.3410%
Ira Breiti, MD	3.2553%	3.3810%
CKB Partners, LLC <i>Seth Cohen, MD</i> <i>Franklin Kasmin, MD</i>	2.5214%	1.3260%
David Feldman, MD	3.5762%	3.7150%
Lexington Endo, LLC <i>Howard Antosofsky, MD</i> <i>Ruvan Shien, MD</i> <i>Howard Seigel, MD</i>	7.1726%	4.8740%
<i>Babak Mohajer, MD</i>	5.1423%	5.3410%
Moushumi Sanghavi, MD	5.3391%	5.5460%
Gramparknorth, LLC <i>Moushumi Sanghavi, MD</i> <i>**Bharat Sanhavi, MD</i>	1.1357%	1.1800%
Brett Bernstein, MD	1.9791%	2.0556%
CLASS B MEMBERS		
Barry Tanner	16.1824%	0.0000%
Christina Morrison	12.0912%	0.0000%
David Young	12.0912%	0.0000%
PE Healthcare Associates, LLC <i>**Barry Tanner (48.00%)</i> <i>**David Young (26.00%)</i> <i>**Christina Morrison (26.00%)</i>	0.0000%	41.9260%
CLASS C MEMBERS		
Mount Sinai Ambulatory Ventures, Inc.	17.2779%	17.9460%
Total	100%	100%

***Subject to Character and Competence*

The following charts show the current and proposed memberships interests within the member LLCs of ESNY:

CKB Partners, Inc.

Member	Current	Proposed
Seth Cohen, MD	50%	100%
Franklin Kasmin, MD	50%	0%
Total	100%	100%

Lexington Endo, LLC

Member	Current	Proposed
Howard Antosofsky, MD	33.333%	50%
Ruvan Shein, MD	33.333%	50%
Howard Siegel, MD	33.333%	0%
Total	100%	100%

Gramparknorth, LLC

Member	Current	Proposed
Moushumi Sanghavi, MD	100%	90.694%
Bharat Sanghavi, MD	0%	9.306%
Total	100%	100%

PE Healthcare Associates, LLC

Member	Current*	Proposed*
Barry Tanner	48%	48%
David Young	26%	26%
Christina Morrison	26%	26%
Total	100%	100%

*PEHA is an existing LLC and the membership will not change as a result of this application.

PE Healthcare Associates, in accordance with the terms of the Center's Operating Agreement, proposes to appoint Larry Trenk as an outside manager to serve on the Center's Board of Managers.

Larry Trenk is the Vice President of Operations of Physicians Endoscopy where he is responsible for the management of eight GI ambulatory surgery centers in the New York and New Jersey markets. He spearheaded COVID-19 reopening plans that resulted in meeting or surpassing pre-pandemic utilization and profitability targets. He serves as the point person for collaborating with Mount Sinai. Previously, he was the Vice President and Chief Administrative Officer of Trinity Health of New England where he had administrative oversight of approximately 500 providers. He was formerly the Market President and Regional Vice President of United Surgical Partners International and he was also previously the COO of SurgeM, LLC

Dr. Bharat Sanghavi is a Gastroenterologist at Gastroenterology on Gramercy Park and an Attending Physician at Cabrini Medical Center. He is also a Consulting Physician at New York Downtown Hospital. He received his medical degree from Baroda Medical College in India and completed his residency in Internal Medicine and his fellowship in Gastroenterology at Cabrini Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Sanghavi is affiliated with Mount Sinai Beth Israel.

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2021-present</i>
<i>Island Digestive Health</i>	<i>02/2021-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>

<i>Advanced Surgery Center of Long Island</i>	10/2021-present
<i>Manhattan Endoscopy Center</i>	10/2021-present
<i>Putnam Gastroenterology</i>	10/2021-present
<i>Queens Endoscopy ASC</i>	10/2021-present
<i>Yorkville Endoscopy</i>	10/2021-present

William “Barry” Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO’s discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

<i>Atlantic Gastro Surgicenter</i>	11/2016-present
<i>Augusta Endoscopy Center</i>	12/2010-present
<i>Berks Center for Digestive Health</i>	12/2001-present
<i>Bethesda Endoscopy Center</i>	11/2018-present
<i>Burlington County Endoscopy Center</i>	11/2008-present
<i>Carnegie Hill Endoscopy</i>	03/2005-present
<i>Central Arizona Endoscopy</i>	12/2006-present
<i>Central Jersey ASC</i>	06/2017-present
<i>Dekalb Endoscopy Center</i>	12/2015-present
<i>DHA Endoscopy</i>	08/2012-present
<i>Digestive Disease Endoscopy Center</i>	08/2012-present
<i>Digestive Disease & Endoscopy Center</i>	03/2020-present
<i>Digestive Health Specialist Endoscopy Ctr</i>	10/2018-present
<i>East Side Endoscopy</i>	01/2012-present
<i>The Endoscopy Center at Bainbridge</i>	10/2007-present
<i>University Suburban Endoscopy Ctr</i>	03/2021-present
<i>Emerson Endoscopy and Digestive Health Ctr</i>	03/2021-present
<i>Endoscopy Associates of Valley Forge</i>	08/2018-present
<i>Endoscopy Center at Robinwood</i>	05/2012-present
<i>Endoscopy Center at St. Mary’s</i>	12/2016-present
<i>Endoscopy Center of Bucks County</i>	01/2013-present
<i>Endoscopy Center of Niagara</i>	03/2014-present
<i>Endoscopy Center of West Central Ohio</i>	04/2015-present
<i>Endoscopy Center of Western New York</i>	03/2004-present
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<i>Endoscopy Center of Western New York</i>	<i>12/2020-present</i>
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<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>

Long Island Digestive Endoscopy
 Manhattan Endoscopy Center
 Putnam Gastroenterology
 Yorkville Endoscopy

10/2021-present
 10/2021-present
 10/2021-present
 10/2021-present

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Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Membership Interest Transfer Agreement

The applicant has submitted three executed Membership Interest Transfer Agreements for the proposed members, the terms of which are summarized below:

Date:	12/21/2021
Description:	Transfer a combined 41.926% membership interest of Class B members in ESNY to PEHA
Transferees:	Barry Tanner, Christina Morrison, and David Young
Transferee:	PE Health Care Associates, LLC
Purchase Price:	N/A
Payment of Purchase Price:	N/A

Unit Purchase Agreement

The applicant has submitted the executed Unit Purchase Agreement for the proposed member, the terms of which are summarized below:

Date:	3/30/2022
Description:	Sale of 9.306% interest in Gramparknorth, LLC (Holdco) which amounts to 0.11% indirect membership interest in ESNY
Seller	Dr. Moushumi Sanghavi
Buyer	Dr. Bharat Sanghavi
Purchase Price:	\$261,457
Payment of Purchase Price:	On the effective date, the purchaser shall pay to the seller the fair market purchase price of \$261,457 or \$28,760 (which represents a per-unit price of the company's equity of \$261,457 in the aggregate in exchange for the purchased Holdco interests, payable in one lump sum in the form of a certified check or wire of immediately available funds.

Unit Redemption Agreement between CBK Partners, LLC and ESNY

The applicant has submitted the executed Unit Redemption Agreement for the proposed member, the terms of which are summarized below:

Date:	5/2/2022
Description:	Redemption of Dr. Kasmin's 50% membership in CKB Partners, LLC which equates to a 1.2607% indirect membership interest in ESNY
Seller	CKB Partners, LLC (Dr. Kasmin's 50% membership share)
Buyer	Eastside Endoscopy, LLC
Purchase Price:	\$329,566
Payment of Purchase Price:	The Purchase Price shall be paid to CKB at the Closing as follows: I) An amount equal to the sum of (A) minus (B), where: (A) equals the sum of the Purchase Price minus the amount of the Deferred Redemption Payments, and (B) equals \$243,221.25; and II). The amount of \$243,221.25 to be paid via a promissory note.

Unit Redemption Agreement between Lexington Endo, LLC and ESNY

The applicant has submitted an executed Unit Redemption Agreement for the proposed member, the terms of which are summarized below:

Date:	3/30/2022
Description:	Redemption of Dr. Siegel's 33.333% membership in Lexington Endo, LLC which equates to a 2.3909% indirect membership interest in ESNY
Seller	Lexington Endo, LLC (Dr. Siegel's 33.333% membership share)
Buyer	Eastside Endoscopy, LLC
Purchase Price:	\$625,106
Payment of Purchase Price:	The purchase price shall be paid to Lexington in four (4) equal installments as follows: I) 25% of the purchase price on the Closing Date II) 25% of the purchase price on each of the three anniversaries of the initial payment date, with interest on the outstanding principal balance accruing at six percent.

Capability and Feasibility

There are no project costs associated with this application. ESNY will fund the redemption price of \$954,672 for Dr. Kasmin and Dr. Siegel's combined 3.6516% indirect interest in ESNY within Class A membership via accumulated cash. Dr. Bharat Sanghavi's purchase price of \$261,457 for the acquisition of 9.3060% membership interest in Gramparknorth, LLC will be funded via his personal resources. BFA Attachments A and B are Dr. Bharat Sanghavi's net worth statement and ESNY's financial statements, which indicate sufficient resources available to fund Dr. Bharat Sanghavi's purchase price of \$261,457 for the acquisition of 9.3060% membership interest in Gramparknorth, LLC and the redemption price of withdrawing Class A members' transaction, respectively.

ESNY's 2020-2021 certified financial statements and their interim report as of March 31, 2022, indicates the entity maintained an average positive working capital position, an average positive net asset position, and experienced an average net operating income of \$7,274,049 for the years 2020-2021. As of March 31, 2022, the entity shows a positive working capital position, positive net asset position, and an operating income of \$2,109,231. ESNY has demonstrated strong financial performance.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Personal Net Worth Statements of proposed members of Gramparknorth, LLC
BFA Attachment B	2020-2021 Certified Financial Statements and March 31, 2022, Internal Financial Statements of ESNY



**Project # 221270-E
Endoscopy Center of Niagara, LLC**

Program: Diagnostic & Treatment Center
Purpose: Establishment

County: Niagara
Acknowledged: July 26, 2022

Executive Summary

Description

Endoscopy Center of Niagara, LLC (ECNI), an existing single-specialty (gastroenterology) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 6930 Williams Road, Niagara Falls (Niagara County), is seeking approval to change the composition of its Class A membership.

ECNI's current ownership consists of two membership classes:

- Class A: Endoscopy Center of Western New York, LLC (ECWNY) (49%).
- Class B: Northtowns Venture, LLC (51%). Northtowns Venture, LLC is comprised of two entities, Kaleida Health (50%) and Niagara Falls Memorial Medical Center (50%).

The current Class A member, ECWNY, is divesting from the facility, and the entire 49% Class A ownership in ECNI will be transferred to two new LLCs as depicted in the Character and Competence section of the Program review, whereby 60 Holdco, LLC will acquire 37.21% and PE Healthcare Associates, LLC will acquire 11.79% interest. All members of the two new member LLCs are current members of ECWNY

The Center, which has two procedure rooms, began operations in February 2014 and is current with its SPARCS reporting.

There will be no change in service. Dr. Yogesh Maheshwari will continue as the Medical Director of the facility.

This application is being processed concurrently by the Department with five other FASC ownership change applications. Upon approval of these applications by PHHPC, PEHA will have membership interest in 16 FASCs in New York State.

**OPCHSM Recommendation
Approval**

Need Summary
There will be no need review per Public Health Law §2801-a (4).

Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary
There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A MEMBERS		
Endoscopy Center of Western New York, LLC <u>Class A Members</u> Christopher Bartolone, MD (8.4301%) David Garson, MD (8.4301%) Richard Kaplan, MD (8.4301%) Siddhartha Shah, MD (8.4301%) Yogesh Maheshwari, MD (8.4301%) Peter Bloom, MD (7.4123%) Stanley Pietrak, MD (7.4123%) Naima Mian, DO (7.4123%) Shahid Mehboob, MD (4.5223%) Ognian Pomakov, MD (4.5223%) Benjamin Schaus, MD (1.25%) Craig Keller, MD (1.25%) <u>Class B Members</u> Barry Tanner (8.0226%) Christina Morrison (8.0226%) David Young (8.0226%)	49.00%	0.00%
PE Healthcare Associates** Barry Tanner (48%) David Young (26%) Christina Morrison (26%)	0.00%	11.79%
60 Holdco, LLC** Christopher Bartolone, MD (11.1022%) David Garson, MD (11.1022%) Richard Kaplan, MD (11.1022%) Siddhartha Shah, MD (11.1022%) Yogesh Maheshwari, MD (11.1022%) Peter Bloom, MD (9.7618%) Stanley Pietrak, MD (9.7618%) Naima Mian, DO (9.7618%) Shahid Mehboob, MD (5.9557%) Ognian Pomakov, MD (5.9557%) Benjamin Schaus, MD (1.6462%) Craig Keller, MD (1.6462%)	0.00%	37.21%
CLASS B MEMBERS		
Northtown Ventures, LLC Kaleida Health (50%) Niagara Falls Memorial Medical Center (50%)	51.00%	51.00%
Total	100%	100%

**Members subject to Character and Competence Review

PE Healthcare Associates, in accordance with the terms of the Center's Operating Agreement, proposes to appoint Robert Estes as an outside manager to serve on the Center's Board of Managers.

Robert Estes is the Senior Vice President of Operations of Physicians Endoscopy LLC. He is responsible for outside oversight of administrators for all operational activities, growth, and strategic planning, and acting as a liaison between the company and its partners.

Dr. Christopher Bartolone is a Managing Partner at Gastroenterology Associates, LLP and the Medical Director of the Endoscopy Center of Western New York. He received his medical degree from SUNY Buffalo School of Medicine and Biomedical Sciences. He completed his residency in Internal Medicine at SUNY Buffalo and his fellowship in Gastroenterology at the University of Illinois at Chicago Section of Digestive and Liver Disease. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Bartolone discloses ownership interest in the following healthcare facility:

The Endoscopy Center of Western New York 03/2001-present

Dr. Peter Bloom is a partner at Gastroenterology Associates, LLP and is a Staff Physician in Gastroenterology at Millard Filmore Suburban Hospital, Mt. St. Mary's Hospital, and Sisters of Charity Hospital. He received his medical degree from SUNY Buffalo School of Medicine and Biomedical Sciences. He received his diploma in International Health from Case Western Reserve University Metrohealth Medical Center. He completed his residency in Internal Medicine at Case Western Reserve University Metrohealth Medical Center. He completed his fellowship in Gastroenterology at the University of Maryland School of Medicine. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Bloom discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York 11/2012-present

Dr. David Garson is a Gastroenterologist at Gastroenterology Associates, LLP. He is a Staff Physician at Niagara Falls Hospital, Millard Filmore Suburban Hospital, Mt. St. Mary's Hospital, and Sister of Charity Hospital. He is an Assistant Clinical Instructor of Medicine at SUNY Buffalo. He received his medical degree from SUNY Downstate. He completed his residency in Internal Medicine at Long Island Jewish Hospital and his fellowship in Gastroenterology at SUNY Buffalo. Dr. Garson discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York 03/2001-present

Dr. Richard Kaplan is a Managing Partner of Gastroenterology Associates, LLP. He is a Staff Gastroenterologist at Mt. St. Mary's Hospital, Kaleida Health, and Sisters of Charity Hospital. He is a Clinical Assistant Professor of Medicine at SUNY Buffalo. He received his medical degree from the University of Torino in Italy. He completed his residency in Internal Medicine at Interfaith Medical Center. He completed his fellowship and Clinical Instructor in Medicine at SUNY Buffalo. Dr. Kaplan discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York 03/2001-present

Dr. Craig Keller is a Gastroenterologist at Gastroenterology Associates, LLP. He received his medical degree At SUNY Buffalo School of Medicine and Biomedical Sciences. He completed his residency in Internal Medicine and his fellowship in Gastroenterology at SUNY Buffalo in 2017. Dr. Keller discloses ownership interest in the following healthcare facility:

The Endoscopy Center of Western New York 12/2020-present

Dr. Yogesh Maheswari is a Gastroenterologist at Gastroenterology Associate, LLP. He is a Gastroenterologist at Sisters of Charity Hospital, Mt. St. Mary's, Millard Filmore Suburban Hospital, and Niagara Falls Memorial Hospital for approximately. He received his medical degree from Maulana Azad Medical College in India. He completed his residency in Internal Medicine and fellowship in Gastroenterology, Hepatology, and Nutrition at SUNY Buffalo. Dr. Maheswari discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York, LLC 10/2005-present

Dr. Shahid Mehboob is a Gastroenterologist at Gastroenterology Associates, LLP. He is also a Gastroenterologist at Kaleida Health. He is a Clinical Associate Professor of Medicine at SUNY Buffalo. He received his medical degree from King Edward Medical College in Pakistan. He completed his residency in Internal Medicine at Muhlenberg Regional Medical Center in New Jersey. He completed his fellowship in Gastroenterology at Albany Medical Center and in Hepatology-Transplant at the University

of Pittsburgh Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Mehboob discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York 08/2018-present

Dr. Naima Mian is a Partner in Gastroenterology Associates, LLP. She received her medical degree from the New York College of Osteopathic Medicine. She completed her residency in Internal Medicine and fellowship in Gastroenterology at North Shore University Hospital. She is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Mian discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York 11/2012-present

Dr. Stanley Pietrak is a Gastroenterologist at Gastroenterology Associates, LLP. He is a Clinical Assistant Professor of Medicine at SUNY Buffalo Affiliated Hospitals. He received his medical degree from Albany Medical College. He completed his residency in Internal Medicine and fellowship in Gastroenterology at SUNY Buffalo. Dr. Pietrak discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York 11/2012-present

Dr. Ognian Pomakov is a Gastroenterologist at Gastroenterology Associates, LLP, Sister of Charity of Hospital, and Millard Fillmore Suburban Hospital. He received his medical degree from the Higher Institute of Medicine of Pleven in Bulgaria. He completed his residency in Internal Medicine and fellowship in Gastroenterology at SUNY Buffalo. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Pomakov discloses ownership interest in the following healthcare facilities:

The Endoscopy of Western New York 08/2018-present

Dr. Benjamin Schaus is a Gastroenterologist at Gastroenterology Associates, LLP. He received his medical degree from the New York College of Osteopathic Medicine. He completed his residency in Internal Medicine at the Cleveland Clinic and his fellowship in Gastroenterology at Millcreek Community Hospital. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Schaus discloses ownership interest in the following healthcare facility:

The Endoscopy Center of Western New York 12/2020-present

Dr. Siddartha Shah is a Gastroenterologist at Gastroenterology Associates, LLP. He received his medical degree from the University of Bombay in India. He completed his residency in Internal Medicine at Wayne State University Hospital. He completed his fellowship in Gastroenterology at SUNY Buffalo and a special fellowship in Endoscopic Ultrasonography at Memorial Sloan-Kettering Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Shah discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York 03/2001-present

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	12/2020-present
<i>Carnegie Hill Endoscopy</i>	07/2021-present
<i>East Side Endoscopy</i>	06/2021-present
<i>Endoscopy Center of Niagara</i>	07/2021-present
<i>Endoscopy Center of Western New York</i>	12/2021-present
<i>Island Digestive Health</i>	02/2021-present
<i>Long Island Center for Digestive Health</i>	06/2021-present
<i>Mid-Bronx Endoscopy Center</i>	07/2021-present
<i>South Brooklyn Endoscopy Center</i>	10/2021-present
<i>Great South Bay Endoscopy Center</i>	10/2021-present
<i>Liberty Endoscopy Center</i>	10/2021-present
<i>Advanced Surgery Center of Long Island</i>	10/2021-present

<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
<i>Putnam Gastroenterology</i>	<i>10/2021-present</i>
<i>Queens Endoscopy ASC</i>	<i>10/2021-present</i>
<i>Yorkville Endoscopy</i>	<i>10/2021-present</i>

William “Barry” Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO’s discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

<i>Atlantic Gastro Surgicenter</i>	<i>11/2016-present</i>
<i>Augusta Endoscopy Center</i>	<i>12/2010-present</i>
<i>Berks Center for Digestive Health</i>	<i>12/2001-present</i>
<i>Bethesda Endoscopy Center</i>	<i>11/2018-present</i>
<i>Burlington County Endoscopy Center</i>	<i>11/2008-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>03/2005-present</i>
<i>Central Arizona Endoscopy</i>	<i>12/2006-present</i>
<i>Central Jersey ASC</i>	<i>06/2017-present</i>
<i>Dekalb Endoscopy Center</i>	<i>12/2015-present</i>
<i>DHA Endoscopy</i>	<i>08/2012-present</i>
<i>Digestive Disease Endoscopy Center</i>	<i>08/2012-present</i>
<i>Digestive Disease & Endoscopy Center</i>	<i>03/2020-present</i>
<i>Digestive Health Specialist Endoscopy Ctr</i>	<i>10/2018-present</i>
<i>East Side Endoscopy</i>	<i>01/2012-present</i>
<i>The Endoscopy Center at Bainbridge</i>	<i>10/2007-present</i>
<i>University Suburban Endoscopy Ctr</i>	<i>03/2021-present</i>
<i>Emerson Endoscopy and Digestive Health Ctr</i>	<i>03/2021-present</i>
<i>Endoscopy Associates of Valley Forge</i>	<i>08/2018-present</i>
<i>Endoscopy Center at Robinwood</i>	<i>05/2012-present</i>
<i>Endoscopy Center at St. Mary’s</i>	<i>12/2016-present</i>
<i>Endoscopy Center of Bucks County</i>	<i>01/2013-present</i>
<i>Endoscopy Center of Niagara</i>	<i>03/2014-present</i>
<i>Endoscopy Center of West Central Ohio</i>	<i>04/2015-present</i>
<i>Endoscopy Center of Western New York</i>	<i>03/2004-present</i>
<i>Eastside Endoscopy Center</i>	<i>06/2005-present</i>
<i>EEC-Issaquah</i>	<i>02/2012-present</i>
<i>Elgin Gastroenterology Center</i>	<i>09/2012-present</i>
<i>Fredericksburg Endoscopy</i>	<i>02/2020-present</i>
<i>Garden State Endoscopy and Surgery Ctr</i>	<i>05/2015-present</i>
<i>Gastrointestinal Endoscopy Center</i>	<i>09/2018-present</i>
<i>Island Digestive Health Center</i>	<i>04/2014-present</i>
<i>Kalamazoo Endo Center</i>	<i>05/2009-present</i>
<i>Laredo Digestive Health Center</i>	<i>05/2009-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2006-present</i>
<i>Michigan Endoscopy Center</i>	<i>02/2013-present</i>
<i>Michigan Endoscopy Center at Providence Park</i>	<i>12/2013-present</i>
<i>Northern New Jersey for Advanced Endoscopy</i>	<i>03/2016-present</i>
<i>Northwest Endoscopy Center</i>	<i>06/1994-present</i>
<i>PGC Endoscopy Center for Excellence</i>	<i>02/2015-present</i>
<i>Princeton Endoscopy Center</i>	<i>01/2022-present</i>
<i>S. Broward Endoscopy</i>	<i>06/2015-present</i>
<i>Surgical Centers of Michigan</i>	<i>06/2016-present</i>
<i>UH North Ridgeville Endoscopy Center</i>	<i>05/2019-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>08/2017-present</i>
<i>Lone Star Endoscopy</i>	<i>04/2006-present</i>
<i>Lone Star Endoscopy Satellite Office 1</i>	<i>09/2014-present</i>

<i>Lone Star Endoscopy Satellite Office 2</i>	<i>10/2017-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>2017-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>04/2013-present</i>
<i>Liberty Endoscopy</i>	<i>02/2017-present</i>
<i>Advanced Surgery Center</i>	<i>02/2012-present</i>
<i>Manhattan Endoscopy Center</i>	<i>2017-present</i>
<i>Putnam Gastroenterology</i>	<i>12/2010-present</i>
<i>Queens Endoscopy ASC</i>	<i>2017-present</i>
<i>Yorkville Endoscopy</i>	<i>08/2012-present</i>
<i>Endo-surgical Center of Florida</i>	<i>05/2010-09/2014</i>
<i>AZ West Endoscopy Center</i>	<i>2010-2019</i>
<i>Greater Gaston Endoscopy Center</i>	<i>10/2014-08/2019</i>
<i>Delmarva Endoscopy Center</i>	<i>07/2019-07/2020</i>
<i>Flushing Endoscopy Center</i>	<i>2011- 2021</i>
<i>Queens Boulevard ASC</i>	<i>2010-2021</i>
<i>West Side GI</i>	<i>2012-2020</i>
<i>Hudson Valley Center for Digestive Health</i>	<i>07/2012-04/2018</i>
<i>AMSC</i>	<i>12/2016-06/2018</i>
<i>Mulberry ASC</i>	<i>08/2016-present</i>
<i>Chesapeake Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Columbia Surgery Center</i>	<i>04/2022-present</i>
<i>Bergman Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Baltimore Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Carroll County Eye Surgery</i>	<i>04/2022-present</i>
<i>The Surgery Center</i>	<i>04/2022-present</i>
<i>Eyes of York Surgery Center</i>	<i>04/2022-present</i>
<i>NEI ASC</i>	<i>04/2022-present</i>
<i>Pennsylvania Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Ophthalmic Associates Surgery and Laser Ctr</i>	<i>04/2022-present</i>
<i>Surgery Specialty Center of Northeastern PA</i>	<i>04/2022-present</i>
<i>Denali United</i>	<i>01/22-present</i>
<i>Pearl Road Surgery Center</i>	<i>2019-present</i>
<i>PET Imaging VI</i>	<i>09/2019-present</i>
<i>PET Imaging VIII</i>	<i>09/2019-present</i>
<i>PET Imaging IX</i>	<i>09/2019-present</i>
<i>PET Imaging XII</i>	<i>09/2019-present</i>
<i>PET Imaging XVII</i>	<i>09/2019-present</i>

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2020-present</i>
<i>Island Digestive Health Center</i>	<i>02/2021-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Long Island Digestive Endoscopy</i>	<i>10/2021-present</i>

Manhattan Endoscopy Center
 Putnam Gastroenterology
 Yorkville Endoscopy

10/2021-present
 10/2021-present
 10/2021-present

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Unit Transfer Agreement

The applicant has submitted the executed Unit Transfer Agreement, the terms of which are summarized below:

Date:	May 1, 2022
Description:	Transfer of the current 49 units of class A membership in Endoscopy of Niagara, LLC
Transferor	Endoscopy Center of Western New York, LLC
Transferee	All the individual members of Endoscopy Center of Western New York, LLC
Transferee Reimbursement	Pro rata to their ownership percentage in the Transferor.
Payment of Purchase Price:	N/A

Contribution Agreement

The applicant has submitted an executed Contribution Agreement for the proposed members. The contribution agreement is being used to allow the individual members of ECNI to transfer their interest to 60 Holdco, LLC for an equivalent ownership percentage in 60 Holdco. The terms of the agreement are summarized below:

Date:	May 1, 2022
Description:	Contribution of 37.21% Class A ownership interest in Endoscopy of Niagara, LLC
Contributors:	12 of the individual members of Endoscopy Center of Western New York, LLC
Contributees:	60 Holdco, LLC
Contribution Reimbursement	Pro rata percentage shares in 60 Holdco, LLC.

Membership Interest Transfer Agreement

The applicant has submitted three executed Membership Interest Transfer Agreements for the proposed members, the terms of which are summarized below:

Date:	December 21, 2021
Description:	Transfer of 11.79% Class A ownership interest in Endoscopy of Niagara, LLC
Transferors:	Barry Tanner, Christina Morrison, and David Young
Transferee:	PE Healthcare Associates, LLC
Purchase Price	\$0
Percentage Interest	Barry Tanner 5.66%, Christina Morrison 3.065%, and David Young 3.065%
Total Transfer	PE Health Associates 11.79%

The transferors did not have direct ownership of the 11.79% interest in Endoscopy of Niagara, LLC at the time of execution but did have indirect ownership via their ownership of Endoscopy Center of Western New York, LLC. Endoscopy Center of Western New York, LLC intends to distribute its interest in Endoscopy of Niagara, LLC to the individual members of the facility, which is detailed under the unit transfer agreement.

Capability and Feasibility

There are no project costs or purchase prices associated with this application. The exchange of 49% Class A membership interest in ECNI to PE Healthcare Associates, LLCs (PEHA) 11.79% and 60 Holdco, LLC 37.21% is being transferred at no cost.

BFA Attachment A presents 2020-2021 certified and 2022 internal financial statements of Endoscopy Center of Niagara, LLC. As shown, the facility had both average positive working capital and net asset positions of \$870,234 and \$1,476,168, respectively for the period 2020-2021. Also, the facility achieved a net income of \$1,490,955 and \$1,584,063 in 2020 and 2021, respectively. The facility also achieved both positive working capital and net asset positions of \$532,090 and \$1,108,039, respectively for the period 1/1/22-6/30/2022. Also, the facility achieved a net income of \$765,837 for the period 1/1/2022-6/30/2022.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Attachments

BFA Attachment A	2020-2021 Certified and the 1/1/2022-6/30/2022 internal financial statements of Endoscopy Center of Niagara, LLC
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**Project # 221271-E
Endoscopy Center of Western New York, LLC**

Program: Diagnostic and Treatment Center **County:** Erie
Purpose: Establishment **Acknowledged:** July 14, 2022

Executive Summary

Description

Endoscopy Center of Western New York, LLC (ECWNY), a proprietary limited liability company that operates an existing single-specialty (gastroenterology) Article 28 freestanding ambulatory surgery center (FASC) at 60 Maple Road, Williamsville (Erie County), is seeking approval to transfer 100% membership interest from 15 withdrawing members to two new member LLCs.

ECWNY's current ownership consists of two member classes:

- Class A: 12 physician members (75.9320%)
- Class B: three non-physician members (24.0678%)

Upon approval of this project, ECWNY will have one Class A member and one Class B member, both comprised of subsets of the current individual members. See the Character and Competence section of the Program Review for the exact proposed membership structure.

The Center, which has five procedure rooms, began operations in March 2004 and is current with its SPARCS reporting. There will be no changes to services. Christopher J. Bartolone, M.D., a Class A member who is board-certified in Internal Medicine and Gastroenterology, will continue to serve as the Medical Director. Millard Fillmore Suburban will continue to

provide transfer and backup services (three miles and seven minutes travel time).

This application is being processed concurrently by the Department with five other PEHA change of ownership applications. Upon approval of these applications by PHHPC, PEHA will be a member of 16 FASCs in New York State.

**OPCHSM Recommendation
Approval**

Need Summary
There will be no need review per Public Health Law §2801-a (4).

Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary
There are no project costs or purchase prices for this application.

(in 000's)	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$17,398	\$15,293	\$15,293
Expenses	<u>8,856</u>	<u>\$9,021</u>	<u>\$9,134</u>
Net Income	\$8,542	\$6,272	\$6,159

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A		
Christopher Bartolone, M.D.	8.4301%	0.0000%
David Garson, M.D.	8.4301%	0.0000%
Richard Kaplan, M.D.	8.4301%	0.0000%
Siddhartha Shah, M.D.	8.4301%	0.0000%
Yogesh Maheshwari, M.D.	8.4301%	0.0000%
Peter Bloom, M.D.	7.4123%	0.0000%
Stanley Pietrak, M.D.	7.4123%	0.0000%
Naima Mian, D.O.	7.4123%	0.0000%
Shahid Mehboob, M.D.	4.5223%	0.0000%
Ognian Pomakov, M.D.	4.5223%	0.0000%
Benjamin Schaus, M.D.	1.2500%	0.0000%
Craig Keller, M.D.	1.2500%	0.0000%
60 Holdco, LLC	0.0000%	75.9320%
**Christopher Bartolone, M.D. (11.1022%)		
**David Garson, M.D. (11.1022%)		
**Richard Kaplan, M.D. (11.1022%)		
**Siddhartha Shah, M.D. (11.1022%)		
**Yogesh Maheshwari, M.D. (11.1022%)		
**Peter Bloom, M.D. (9.7618%)		
**Stanley Pietrak, M.D. (9.7618%)		
**Naima Mian, M.D. (9.7618%)		
**Shahid Mehboob, M.D. (5.9557%)		
**Ognian Pomakov, M.D. (5.9557%)		
**Benjamin Schaus, M.D. (1.6462%)		
**Craig Keller, M.D. (1.6462%)		
CLASS B		
Barry Tanner	8.0226%	0.0000%
David Young	8.0226%	0.0000%
Christina Morrison	8.0226%	0.0000%
PE Healthcare Associates, LLC	0.0000%	24.0678%
**Barry Tanner (48%)		
**David Young (26%)		
**Christina Morrison (26%)		
Total	100%	100%

***Subject to Character and Competence*

Dr. Christopher Bartolone is a Managing Partner at Gastroenterology Associates, LLP and is the Medical Director of Endoscopy Center of Western New York. He is also a Partner of Gastroenterology Associates, LLP. Previously, he was an Associate of WNY Gastroenterology, LLP and an Assistant Clinical Professor of Medicine. He received his medical degree from SUNY Buffalo School of Medicine and Biomedical Sciences, completed his residency in Internal Medicine at SUNY Buffalo, and his fellowship in Gastroenterology at the University of Illinois at Chicago Section of Digestive and Liver Disease. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Peter Bloom is currently employed at Gastroenterology Associates, LLP and is a Staff Physician in Gastroenterology at Millard Filmore Suburban Hospital, Mt. St. Mary's Hospital, and Sisters of Charity Hospital. He was previously the Assistant Professor for the Division of Digestive Diseases, the Staff Gastroenterologist at Gastroenterology Consultants, PC, Saint Joseph's Hospital, Northside Hospital, Emory Dunwoody Medical Center, and Emory Adventist Medical Center, the Chief of Gastroenterology at the VA Medical Center, a Staff Gastroenterologist at the VA Medical Center, an Attending Physician at Grady Memorial Hospital, a Clinical Instructor at the University of Maryland School of Medicine, and an Associate Investigator and Attending Physician at the Department of Veteran's Affairs. Dr. Bloom received his medical degree from SUNY Buffalo School of Medicine and Biomedical Sciences and received his diploma in International Health from Case Western Reserve University Metrohealth Medical Center. He completed his residency in Internal Medicine at Case Western Reserve University Metrohealth Medical Center and completed his fellowship in Gastroenterology at the University of Maryland School of Medicine. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. David Garson is a Gastroenterologist at Gastroenterology Associates, LLP. In addition to this, he is a Staff Physician at Niagara Falls Hospital, Millard Filmore Suburban Hospital, and Mt. St. Mary's Hospital, a Staff Physician at Sister of Charity Hospital, and an Assistant Clinical Instructor of Medicine at SUNY Buffalo. He was previously a Gastroenterologist at WNY Gastroenterology, LLP and a Staff Physician at Buffalo General Hospital. He received his medical degree from SUNY Downstate, completed his residency in Internal Medicine at Long Island Jewish Hospital, and his fellowship in Gastroenterology at SUNY Buffalo.

Dr. Richard Kaplan is a Managing Partner of Gastroenterology Associates, LLP. In addition, he is a Staff Gastroenterologist at Mt. St. Mary's, Kaleida Health, and Sisters of Charity Hospital, and is a Clinical Assistant Professor of Medicine at SUNY Buffalo for 34 years. He was previously a Gastroenterologist employed in private practice. He received his medical degree from the University of Torino in Italy, completed his residency in Internal Medicine at Interfaith Medical Center, and completed his fellowship and Clinical Instructor in Medicine at SUNY Buffalo.

Dr. Craig Keller is a Gastroenterologist at Gastroenterology Associates, LLP. He received his medical degree at SUNY Buffalo School of Medicine and Biomedical Sciences and completed his residency in Internal Medicine and his fellowship in Gastroenterology at SUNY Buffalo.

Dr. Yogesh Maheswari is a Gastroenterologist at Gastroenterology Associate, LLP, Sisters of Charity Hospital, Mt. St. Mary's, Millard Filmore Suburban Hospital, and Niagara Falls Memorial Hospital. He was previously a Staff Physician at Kenmore Mercy Hospital and Dartmouth Hitchcock Medical Center. He was also previously the Chief of Gastroenterology at the VA Medical Center and a Staff Gastroenterologist before becoming Chief. In addition, he was the Assistant Professor of Clinical Medicine at Dartmouth Medical School and an Instructor in Clinical Medicine at SUNY Buffalo. He received his medical degree from Maulana Azad Medical College in India and completed his residency in Internal Medicine and fellowship in Gastroenterology, Hepatology, and Nutrition at SUNY Buffalo.

Dr. Shahid Mehboob is a Gastroenterologist at Gastroenterology Associates, LLP, Kaleida Health, and Erie County Medical Center. He is also a Clinical Associate Professor of Medicine at SUNY Buffalo. Previously, he was an Associate Program Director of Gastroenterology at SUNY Buffalo and a Clinical Instructor at Albany Medical College. He received his medical degree from King Edward Medical College in Pakistan, completed his residency in Internal Medicine at Muhlenberg Regional Medical Center in New Jersey, and completed his fellowship in Gastroenterology at Albany Medical Center and in Hepatology-Transplant at the University of Pittsburgh Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Naima Mian is a Partner in Gastroenterology Associates, LLP. She received her medical degree from the New York College of Osteopathic Medicine and completed her residency in Internal Medicine and fellowship in Gastroenterology at North Shore University Hospital. She is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Stanley Pietrak is a Gastroenterologist at Gastroenterology Associates, LLP and a Clinical Assistant Professor of Medicine at SUNY Buffalo Affiliated Hospitals. Previously, he was a Physician at Buffalo

Internal Medicine Associates, a Gastroenterologist at Williamsville Gastroenterology, the Director of the Medical Emergency Department of Erie County Medical Center, and the Acting Chief and the Chief of the Division of Gastroenterology of Sister's Hospital. He received his medical degree from Albany Medical College and completed his residency in Internal Medicine and fellowship in Gastroenterology at SUNY Buffalo.

Dr. Ognian Pomakov is a Gastroenterologist at Gastroenterology Associates, LLP, Sister of Charity of Hospital, and Millard Fillmore Suburban Hospital. Previously, he was a Gastroenterologist at Buffalo Gastroenterology Associates, LLP and Mercy Hospital of Buffalo, a Clinical Associate Professor of Gastroenterology at SUNY Buffalo, and an Attending Gastroenterologist at WYNHCS, Buffalo Veteran's Administration Medical Center. He received his medical degree from the Higher Institute of Medicine of Pleven in Bulgaria and completed his residency in Internal Medicine and fellowship in Gastroenterology at SUNY Buffalo. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Benjamin Schaus is a Gastroenterologist at Gastroenterology Associates. He was previously a Partner at Buffalo Gastroenterology Associates, an Associate Faculty Member at LECOM, and a Clinical Associate in the Department of Internal Medicine at the Cleveland Clinic. He received his medical degree from the New York College of Osteopathic Medicine, completed his residency in Internal Medicine at the Cleveland Clinic, and his fellowship in Gastroenterology at Millcreek Community Hospital. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Siddartha Shah is a Gastroenterologist at Gastroenterology Associates, LLP. Previously, he was a Gastroenterologist at Buffalo Medical Group and a Physician at Academic Medicine Services at SUNY Buffalo. He received his medical degree from the University of Bombay in India, completed his residency in Internal Medicine at Wayne State University Hospital, completed his fellowship in Gastroenterology at SUNY Buffalo, and a special fellowship in Endoscopic Ultrasonography at Memorial Sloan-Kettering Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2021-present</i>
<i>Island Digestive Health</i>	<i>02/2021-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Advanced Surgery Center of Long Island</i>	<i>10/2021-present</i>
<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
<i>Putnam Gastroenterology</i>	<i>10/2021-present</i>
<i>Queens Endoscopy ASC</i>	<i>10/2021-present</i>
<i>Yorkville Endoscopy</i>	<i>10/2021-present</i>

William "Barry" Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO's discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

<i>Atlantic Gastro Surgicenter</i>	11/2016-present
<i>Augusta Endoscopy Center</i>	12/2010-present
<i>Berks Center for Digestive Health</i>	12/2001-present
<i>Bethesda Endoscopy Center</i>	11/2018-present
<i>Burlington County Endoscopy Center</i>	11/2008-present
<i>Carnegie Hill Endoscopy</i>	03/2005-present
<i>Central Arizona Endoscopy</i>	12/2006-present
<i>Central Jersey ASC</i>	06/2017-present
<i>Dekalb Endoscopy Center</i>	12/2015-present
<i>DHA Endoscopy</i>	08/2012-present
<i>Digestive Disease Endoscopy Center</i>	08/2012-present
<i>Digestive Disease & Endoscopy Center</i>	03/2020-present
<i>Digestive Health Specialist Endoscopy Ctr</i>	10/2018-present
<i>East Side Endoscopy</i>	01/2012-present
<i>The Endoscopy Center at Bainbridge</i>	10/2007-present
<i>University Suburban Endoscopy Ctr</i>	03/2021-present
<i>Emerson Endoscopy and Digestive Health Ctr</i>	03/2021-present
<i>Endoscopy Associates of Valley Forge</i>	08/2018-present
<i>Endoscopy Center at Robinwood</i>	05/2012-present
<i>Endoscopy Center at St. Mary's</i>	12/2016-present
<i>Endoscopy Center of Bucks County</i>	01/2013-present
<i>Endoscopy Center of Niagara</i>	03/2014-present
<i>Endoscopy Center of West Central Ohio</i>	04/2015-present
<i>Endoscopy Center of Western New York</i>	03/2004-present
<i>Eastside Endoscopy Center</i>	06/2005-present
<i>EEC-Issaquah</i>	02/2012-present
<i>Elgin Gastroenterology Center</i>	09/2012-present
<i>Fredericksburg Endoscopy</i>	02/2020-present
<i>Garden State Endoscopy and Surgery Ctr</i>	05/2015-present
<i>Gastrointestinal Endoscopy Center</i>	09/2018-present
<i>Island Digestive Health Center</i>	04/2014-present
<i>Kalamazoo Endo Center</i>	05/2009-present
<i>Laredo Digestive Health Center</i>	05/2009-present
<i>Long Island Center for Digestive Health</i>	06/2006-present
<i>Michigan Endoscopy Center</i>	02/2013-present
<i>Michigan Endoscopy Center at Providence Park</i>	12/2013-present
<i>Northern New Jersey for Advanced Endoscopy</i>	03/2016-present
<i>Northwest Endoscopy Center</i>	06/1994-present
<i>PGC Endoscopy Center for Excellence</i>	02/2015-present
<i>Princeton Endoscopy Center</i>	01/2022-present
<i>S. Broward Endoscopy</i>	06/2015-present
<i>Surgical Centers of Michigan</i>	06/2016-present
<i>UH North Ridgeville Endoscopy Center</i>	05/2019-present
<i>Mid-Bronx Endoscopy Center</i>	08/2017-present
<i>Lone Star Endoscopy</i>	04/2006-present
<i>Lone Star Endoscopy Satellite Office 1</i>	09/2014-present
<i>Lone Star Endoscopy Satellite Office 2</i>	10/2017-present
<i>South Brooklyn Endoscopy Center</i>	2017-present
<i>Great South Bay Endoscopy Center</i>	04/2013-present
<i>Liberty Endoscopy</i>	02/2017-present
<i>Advanced Surgery Center</i>	02/2012-present
<i>Manhattan Endoscopy Center</i>	2017-present
<i>Putnam Gastroenterology</i>	12/2010-present
<i>Queens Endoscopy ASC</i>	2017-present
<i>Yorkville Endoscopy</i>	08/2012-present
<i>Endo-surgical Center of Florida</i>	05/2010-09/2014
<i>AZ West Endoscopy Center</i>	2010-2019
<i>Greater Gaston Endoscopy Center</i>	10/2014-08/2019

<i>Delmarva Endoscopy Center</i>	<i>07/2019-07/2020</i>
<i>Flushing Endoscopy Center</i>	<i>2011- 2021</i>
<i>Queens Boulevard ASC</i>	<i>2010-2021</i>
<i>West Side GI</i>	<i>2012-2020</i>
<i>Hudson Valley Center for Digestive Health</i>	<i>07/2012-04/2018</i>
<i>AMSC</i>	<i>12/2016-06/2018</i>
<i>Mulberry ASC</i>	<i>08/2016-present</i>
<i>Chesapeake Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Columbia Surgery Center</i>	<i>04/2022-present</i>
<i>Bergman Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Baltimore Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Carroll County Eye Surgery</i>	<i>04/2022-present</i>
<i>The Surgery Center</i>	<i>04/2022-present</i>
<i>Eyes of York Surgery Center</i>	<i>04/2022-present</i>
<i>NEI ASC</i>	<i>04/2022-present</i>
<i>Pennsylvania Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Ophthalmic Associates Surgery and Laser Ctr</i>	<i>04/2022-present</i>
<i>Surgery Specialty Center of Northeastern PA</i>	<i>04/2022-present</i>
<i>Denali United</i>	<i>01/22-present</i>
<i>Pearl Road Surgery Center</i>	<i>2019-present</i>
<i>PET Imaging VI</i>	<i>09/2019-present</i>
<i>PET Imaging VIII</i>	<i>09/2019-present</i>
<i>PET Imaging IX</i>	<i>09/2019-present</i>
<i>PET Imaging XII</i>	<i>09/2019-present</i>
<i>PET Imaging XVII</i>	<i>09/2019-present</i>

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2020-present</i>
<i>Island Digestive Health Center</i>	<i>02/2021-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Long Island Digestive Endoscopy</i>	<i>10/2021-present</i>
<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
<i>Putnam Gastroenterology</i>	<i>10/2021-present</i>
<i>Yorkville Endoscopy</i>	<i>10/2021-present</i>

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State's Office of Medicaid Management, Office of Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Operating Budget

	Current Year (2021)		Year One (2023)		Year Three (2025)	
	Per Proc.	Total (in 000's)	Per Proc.	Total (in 000's)	Per Proc.	Total (in 000's)
Revenues						
Commercial FFS	\$1,098.47	\$10,685	\$1,098.42	\$11,056	\$1,098.42	\$11,056
Medicare FFS	\$523.62	\$682	\$523.63	\$695	\$523.63	\$695
Medicare MC	\$685.28	\$2,699	\$685.24	\$2,753	\$685.24	\$2,753
Medicaid FFS	\$207.64	\$3	\$211.79	\$3	\$211.79	\$3
Medicaid MC	\$540.81	\$677	\$540.82	\$691	\$540.82	\$691
Private Pay	\$8,210.88	\$66	\$8,375.13	\$67	\$8,375.13	\$67
All Other ¹	\$531.43	\$27	\$531.63	\$28	\$531.63	\$28
Total Patient Rev.		\$14,839		\$15,293		\$15,293
Other Income ²		\$1,783		\$0		\$0
Income from LLC ³		\$776		\$0		\$0
Total Revenue		\$17,398		\$15,293		\$15,293
Expenses						
Operating	\$505.33	\$8,250	\$496.73	\$8,415	\$550.56	\$8,528
Capital	37.17	\$606	35.75	\$606	48.85	\$606
Total Expenses	\$543.50	\$8,856	\$532.48	\$9,021	\$599.41	\$9,134
Net Income		\$8,542		\$6,272		\$6,159
Procedures		16,294		16,941		16,932
Cost/Procedure		\$543.50		\$532.48		\$539.43

¹ All Other includes other government payors and self-pay.

² Other Income includes CARES Act funding ECWNY received in 2021

³ ECWNY's share of income received from Endoscopy Center of Niagara, LLC, in which ECWNY owns a 49% membership interest.

The following is noted for the submitted budget:

- The current year reflects the facility's 2021 revenues and expenses.
- The staffing mix reflects 2021 staffing levels based on ongoing operations; staffing changes are not anticipated in Years One and Three.
- Medicare Managed Care revenue is based upon negotiated rates.
- Utilization, revenue, and expense projections are conservatively estimated based historical experience of ECWNY LLC.
- Charity care utilization is based on a forecasted return to normalized operations, as well as,

- ECWNY's community outreach and education efforts related to colon cancer awareness.
- The increase in cost per procedure in Year Three is driven by an increase in professional fees, medical supplies, and purchased services.
- As of August 16, 2022, the facility had no outstanding Medicaid overpayment liabilities.

Utilization by payor source during the current, first, and third years is broken down as follows:

Payor	Current Year	Year One	Year Three
Commercial FFS	59.70%	59.45%	59.45%
Medicare FFS	7.99%	7.84%	7.84%
Medicare MC	24.17%	23.73%	23.73%
Medicaid FFS	0.09%	0.08%	0.08%
Medicaid MC	7.68%	7.54%	7.54%
Private Pay	0.05%	0.05%	0.05%
Charity Care	0.01%	1.00%	1.00%
All Other	0.31%	0.31%	0.31%
Total	100.00%	100.00%	100.00%

Executed Third Amendment to Lease Agreement

The applicant has submitted an executed third amendment to the lease agreement for the existing site, the terms of which are summarized below:

Date:	October 12, 2017
Premises:	60 Maple Road, Williamsville, New York, 14221
Landlord:	60 Maple Road L.L.C.
Tenant:	Endoscopy Center of Western New York, L.L.C.
Term:	10 years, renewed for three (3) additional terms of five (5) years.
Rent:	Base rent for total leased space is \$121,000 (\$10,083.33 per month) Rent will increase at 5% of the base year rent on the second anniversary of the Commencement, and 3% for the remaining years. The landlord shall provide 1,640 additional square feet of adjacent usable space to the Tenant
Provisions:	The tenant is responsible for insurance, utilities, maintenance and repair, and property taxes.

Amended and Restated Administrative Services Agreement

The applicant has submitted an executed First Amendment to the Amended and Restated Administrative Services Agreement (ASA), summarized as follows:

Date:	December 1, 2015
Contract Provider:	Physicians Endoscopy, LLC
Facility Operator:	Williamsville Consulting, LLC an affiliate of ECWNY, LLC
Terms:	12 years, and automatic renewal for three additional three-year terms
Administrative Services Provided:	Billing, collection services, financial management services, strategic planning and development, policies and procedures, contracting services, personnel, supplies, utilities/waste management, operating licenses, and banking.
Annual Fee:	\$81,167 (\$6,763.92 per month) and a \$30.15 flat rate charge per procedure.

Williamsville Consulting, LLC was established to assist in the design, construction, and operation of ECWNY and has been retained by ECWNY to provide development, administrative, and consulting services to ECWNY. Williamsville Consulting retained Physicians Endoscopy, LLC on its behalf to provide administrative services necessary for the day-to-day operations of ECWNY.

Membership Interest Transfer Agreement

The applicant has submitted an executed Membership Interest Transfer Agreement (MITA), effectuated on December 21, 2021, and summarized as follows:

Date:	December 21, 2021
Transferors:	Barry Tanner; Christina Morrison; David Young
Transferee:	PE Healthcare Associates, LLC
Transfer:	Transfer 24.06780 units of ownership interest, constituting 24.06780% ownership interest in ECWNY, LLC.
Purchase Price:	N/A

Contribution Agreement

The applicant has submitted an executed Contribution Agreement (CA), effectuated on May 1, 2022, and summarized as follows:

Date:	May 1, 2022
Transferors:	Christopher Bartolone; David Garson; Richard Kaplan; Siddhartha Shah; Yogesh Maheshwari; Peter Bloom; Stanley Pietrak; Naima Mian; Shahid Mehboob; Ognian Pomako; Benjamin Schaus; Craig Keller
Transferee:	60 Holdco, LLC
Transfer:	Transfer 75.93215 units of ownership interest, constituting 75.93215% ownership interest in ECWNY, LLC.
Purchase Price:	N/A

Capability and Feasibility

There are no project costs associated with this application. Working capital will be funded through ongoing operations. The submitted budget indicates an excess of revenues over expenses of \$6,271,812 and \$6,158,971 during the first and third year of operations, respectively.

BFA Attachment A is ECWNY's 2021 Certified Financial Statements during which the center reported positive working capital and positive net assets and an operating gain of \$5,997,371. ECWNY's operating gain was increased by \$776,193 in income received from Endoscopy Center of Niagara, LLC in which ECWNY owns 49% membership interest, and by \$1,783,008 in other income from CARES Act grants ECWNY received during 2021, resulting in an excess of revenues over expenses of \$8,542,159. ECWNY has met the requirements for CARES Act funding and does not anticipate refunds. BFA Attachment B is a summary of ECWNY's June 2022 Internal Financial Statements, which show a positive working capital position and a positive net asset position, and an operating income of \$4,511,546, which was offset by other expenses resulting net income of 3,247,938 for the period.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	2021 Audited Financial Statements for Endoscopy Center of Western New York
BFA Attachment B	June 2022 Internal Financial Statements for Endoscopy Center of Western New York, LLC



**Project # 221272-E
Island Digestive Health Center, LLC**

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** July 14, 2022

Executive Summary

Description

Island Digestive Health Center LLC (IDHC), an existing single-specialty (gastroenterology) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 471 Montauk Highway, West Islip (Suffolk County), is seeking approval to transfer 10.00% membership interest in IDHC to PE Healthcare Associates, LLC (PEHA).

IDHC's current ownership consists of three member classes:

- Class A: Advanced GI Endoscopy, LLC, an entity comprised of five physicians (39%)
- Class B: three non-physician members (10%)
- Class C: Good Samaritan Hospital Medical Center whose sole corporate member and established co-operator is Catholic Health System of Long Island, Inc. (51%).

Upon approval of this project, IDHC's Class A and Class C membership remain the same. The three existing individual Class B members of IDHC will transfer their entire membership interest in the Center (10% combined) to PEHA. PEHA has three members who are the current individual Class B members of IDHC.

The Center, which has three procedure rooms, began operations in May 2014 and is current with its SPARCS reporting.

There will be no change in services. Babak Danesh, MD will continue as the medical director.

This application is being processed concurrently by the Department with five other FASC change of ownership applications. Upon approval by PHHPC, PEHA will have membership of 16 FASCs in New York State.

**OPCHSM Recommendation
Approval**

Need Summary
There will be no need review per Public Health Law §2801-a (4).

Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary
There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A MEMBER		
Advanced GI Endoscopy Kouroush Adhami, M.D. (25.64%) Neil Lobo, M.D.(25.64%) James Kohlroser, M.D.(20.51%) Krishnaiyer Subramani, M.D. (20.51%) Babak Danesh, M.D. (7.70%)	39.00%	39.00%
CLASS B MEMBERS		
Barry Tanner	3.33%	0.00%
David Young	3.33%	0.00%
Christina Morrison	3.33%	0.00%
PE Healthcare Associates **Barry Tanner (48%) **David Young (26%) **Christina Morrison (26%)	0.00%	10.00%
CLASS C MEMBER		
Good Samaritan Hospital Medical Center	51.00%	51.00%
Total	100%	100%

***Subject to Character and Competence*

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2021-present</i>
<i>Island Digestive Health</i>	<i>02/2021-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Advanced Surgery Center of Long Island</i>	<i>10/2021-present</i>
<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
<i>Putnam Gastroenterology</i>	<i>10/2021-present</i>
<i>Queens Endoscopy ASC</i>	<i>10/2021-present</i>
<i>Yorkville Endoscopy</i>	<i>10/2021-present</i>

William “Barry” Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO’s discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of

Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

<i>Atlantic Gastro Surgicenter</i>	11/2016-present
<i>Augusta Endoscopy Center</i>	12/2010-present
<i>Berks Center for Digestive Health</i>	12/2001-present
<i>Bethesda Endoscopy Center</i>	11/2018-present
<i>Burlington County Endoscopy Center</i>	11/2008-present
<i>Carnegie Hill Endoscopy</i>	03/2005-present
<i>Central Arizona Endoscopy</i>	12/2006-present
<i>Central Jersey ASC</i>	06/2017-present
<i>Dekalb Endoscopy Center</i>	12/2015-present
<i>DHA Endoscopy</i>	08/2012-present
<i>Digestive Disease Endoscopy Center</i>	08/2012-present
<i>Digestive Disease & Endoscopy Center</i>	03/2020-present
<i>Digestive Health Specialist Endoscopy Ctr</i>	10/2018-present
<i>East Side Endoscopy</i>	01/2012-present
<i>The Endoscopy Center at Bainbridge</i>	10/2007-present
<i>University Suburban Endoscopy Ctr</i>	03/2021-present
<i>Emerson Endoscopy and Digestive Health Ctr</i>	03/2021-present
<i>Endoscopy Associates of Valley Forge</i>	08/2018-present
<i>Endoscopy Center at Robinwood</i>	05/2012-present
<i>Endoscopy Center at St. Mary's</i>	12/2016-present
<i>Endoscopy Center of Bucks County</i>	01/2013-present
<i>Endoscopy Center of Niagara</i>	03/2014-present
<i>Endoscopy Center of West Central Ohio</i>	04/2015-present
<i>Endoscopy Center of Western New York</i>	03/2004-present
<i>Eastside Endoscopy Center</i>	06/2005-present
<i>EEC-Issaquah</i>	02/2012-present
<i>Elgin Gastroenterology Center</i>	09/2012-present
<i>Fredericksburg Endoscopy</i>	02/2020-present
<i>Garden State Endoscopy and Surgery Ctr</i>	05/2015-present
<i>Gastrointestinal Endoscopy Center</i>	09/2018-present
<i>Island Digestive Health Center</i>	04/2014-present
<i>Kalamazoo Endo Center</i>	05/2009-present
<i>Laredo Digestive Health Center</i>	05/2009-present
<i>Long Island Center for Digestive Health</i>	06/2006-present
<i>Michigan Endoscopy Center</i>	02/2013-present
<i>Michigan Endoscopy Center at Providence Park</i>	12/2013-present
<i>Northern New Jersey for Advanced Endoscopy</i>	03/2016-present
<i>Northwest Endoscopy Center</i>	06/1994-present
<i>PGC Endoscopy Center for Excellence</i>	02/2015-present
<i>Princeton Endoscopy Center</i>	01/2022-present
<i>S. Broward Endoscopy</i>	06/2015-present
<i>Surgical Centers of Michigan</i>	06/2016-present
<i>UH North Ridgeville Endoscopy Center</i>	05/2019-present
<i>Mid-Bronx Endoscopy Center</i>	08/2017-present
<i>Lone Star Endoscopy</i>	04/2006-present
<i>Lone Star Endoscopy Satellite Office 1</i>	09/2014-present
<i>Lone Star Endoscopy Satellite Office 2</i>	10/2017-present
<i>South Brooklyn Endoscopy Center</i>	2017-present
<i>Great South Bay Endoscopy Center</i>	04/2013-present
<i>Liberty Endoscopy</i>	02/2017-present
<i>Advanced Surgery Center</i>	02/2012-present
<i>Manhattan Endoscopy Center</i>	2017-present
<i>Putnam Gastroenterology</i>	12/2010-present
<i>Queens Endoscopy ASC</i>	2017-present

<i>Yorkville Endoscopy</i>	<i>08/2012-present</i>
<i>Endo-surgical Center of Florida</i>	<i>05/2010-09/2014</i>
<i>AZ West Endoscopy Center</i>	<i>2010-2019</i>
<i>Greater Gaston Endoscopy Center</i>	<i>10/2014-08/2019</i>
<i>Delmarva Endoscopy Center</i>	<i>07/2019-07/2020</i>
<i>Flushing Endoscopy Center</i>	<i>2011- 2021</i>
<i>Queens Boulevard ASC</i>	<i>2010-2021</i>
<i>West Side GI</i>	<i>2012-2020</i>
<i>Hudson Valley Center for Digestive Health</i>	<i>07/2012-04/2018</i>
<i>AMSC</i>	<i>12/2016-06/2018</i>
<i>Mulberry ASC</i>	<i>08/2016-present</i>
<i>Chesapeake Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Columbia Surgery Center</i>	<i>04/2022-present</i>
<i>Bergman Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Baltimore Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Carroll County Eye Surgery</i>	<i>04/2022-present</i>
<i>The Surgery Center</i>	<i>04/2022-present</i>
<i>Eyes of York Surgery Center</i>	<i>04/2022-present</i>
<i>NEI ASC</i>	<i>04/2022-present</i>
<i>Pennsylvania Eye Surgery Center</i>	<i>04/2022-present</i>
<i>Ophthalmic Associates Surgery and Laser Ctr</i>	<i>04/2022-present</i>
<i>Surgery Specialty Center of Northeastern PA</i>	<i>04/2022-present</i>
<i>Denali United</i>	<i>01/22-present</i>
<i>Pearl Road Surgery Center</i>	<i>2019-present</i>
<i>PET Imaging VI</i>	<i>09/2019-present</i>
<i>PET Imaging VIII</i>	<i>09/2019-present</i>
<i>PET Imaging IX</i>	<i>09/2019-present</i>
<i>PET Imaging XII</i>	<i>09/2019-present</i>
<i>PET Imaging XVII</i>	<i>09/2019-present</i>

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

<i>Advanced Endoscopy Center</i>	<i>12/2020-present</i>
<i>Carnegie Hill Endoscopy</i>	<i>07/2021-present</i>
<i>East Side Endoscopy</i>	<i>06/2021-present</i>
<i>Endoscopy Center of Niagara</i>	<i>07/2021-present</i>
<i>Endoscopy Center of Western New York</i>	<i>12/2020-present</i>
<i>Island Digestive Health Center</i>	<i>02/2021-present</i>
<i>Long Island Center for Digestive Health</i>	<i>06/2021-present</i>
<i>Mid-Bronx Endoscopy Center</i>	<i>07/2021-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>10/2021-present</i>
<i>Great South Bay Endoscopy Center</i>	<i>10/2021-present</i>
<i>Liberty Endoscopy Center</i>	<i>10/2021-present</i>
<i>Long Island Digestive Endoscopy</i>	<i>10/2021-present</i>
<i>Manhattan Endoscopy Center</i>	<i>10/2021-present</i>
<i>Putnam Gastroenterology</i>	<i>10/2021-present</i>
<i>Yorkville Endoscopy</i>	<i>10/2021-present</i>

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State's Office of Medicaid Management, Office of

Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Membership Interest Transfer Agreement

The applicant has submitted an executed Membership Interest Transfer Agreement (MITA), effectuated on December 21, 2021, and summarized as follows:

Date:	December 21, 2021
Transferors:	Barry Tanner; Christina Morrison; David Young
Transferee:	PE Healthcare Associates, LLC
Transfer:	Transfer 10 units of ownership interest, constituting 10% ownership interest in IDHC, LLC
Purchase Price:	\$0

Capability and Feasibility

There are no project costs associated with this application. Working capital will be funded through ongoing operations. There is no purchase price for the transfer of 10% of Class B membership interest in the IDHC to PE Healthcare Associates, LLC.

BFA Attachment A is the summary of the 2020 Certified Financial Statements for Island Digestive Health Center, LLC. The 2020 Certified Financial Statements show positive working capital, net asset positions, and a positive operating income of \$1,928,730. The facility's net income for 2020 was offset by other income of \$1,110,945, which includes CARES Act stimulus funding and interest expense of \$3,307, resulting in a net income of \$3,036,368. BFA Attachment B presents a summary of the 2021 Certified Financial Statements for Island Digestive Health Center, LLC, LLC, which shows positive working capital and net asset positions, and an operating income of \$3,063,001. Operating income was offset by \$588,511 reported as other income that includes CARES Act stimulus funding, and \$23,104 in interest expenses, resulting in a net income of \$3,628,408. BFA Attachment C presents financial statements for the Center for the period ended June 30, 2022, during which IDHC reported positive working capital and net asset positions and a net income of \$1,857,089.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	2020 Certified Financial Statements for Island Digestive Health Center, LLC
BFA Attachment B	2021 Certified Financial Statements for Island Digestive Health Center, LLC
BFA Attachment C	June 2022 Internal Financial Statements for Island Digestive Health Center, LLC



Project # 221199-B
Yaldeinu Health

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Kings
Acknowledged: June 22, 2022

Executive Summary

Description

Yaldeinu Health Inc. (Yaldeinu), a not-for-profit corporation, is requesting approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to provide primary care and other medical specialty services.

Yaldeinu has seven board members including the proposed medical director, Raphael Kellman, MD.

Table with 1 column: Board Members. Includes names: Moshe Erlich, Jacob Bar Horin, Raphael Kellman, M.D., Shulamis Peltz, Esq, Yidel Pearlstein, Rivky Reich, Arye Ringel.

The proposed clinic is affiliated with Yaldeinu School, which operates under charter from the Board of Regents of the NY State Education Department to operate a school for children ages 5-21 diagnosed with an autism spectrum disorder and/or pervasive developmental disorder.

The target service area includes the

neighborhoods of Borough Park and Bensonhurst. Yaldeinu Health will also serve residents in adjoining neighborhoods and the entire Brooklyn borough.

Maimonides Medical Center, which is 1.8 miles and 8 minutes away, is expected to serve as the backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

The center will provide primary care and other medical specialties in a Health Professional Shortage Area for Primary Care. The applicant projects 3,932 visits in Year One and 5,180 in Year Three with Medicaid utilization at 72% and charity care at 2%.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary

The total project cost of \$547,295 will be funded by a cash gift from Yaldeinu School, a related entity of the applicant. Yaldeinu School is a charter school that is also a not-for-profit with common board members between the two entities.

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues (\$552,066, \$726,921), Expenses (\$463,302, \$626,631), Net Income (\$88,764, \$100,290).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]
6. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of amended and executed Bylaws, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Certificate of Incorporation, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **March 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **September 1, 2023**, and construction must be completed by **December 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

October 6, 2022

Need and Program Analysis

Program Description

Proposed Operator	Yaldeinu Health Inc.
To Be Known As	Yaldeinu Health
Site Address	1600 63 rd Street Brooklyn, New York 11204 (Kings County)
Services	Medical Services-Primary Care Medical Services-Other Medical Specialties Cardiology Endocrinology Gastroenterology Gynecology Oncology Ophthalmology Orthopedic Urology
Hours of Operation	Monday through Friday 8:00 am to 7:00 pm Hours may be expanded as demand increases.
Staffing (1st Year / 3rd Year)	4.60 FTEs / 7.20 FTEs
Medical Director(s)	Raphael Kellman, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 1.8 miles / 8 minutes away

The proposed clinic is affiliated with Yaldeinu School, which operates under charter from the Board of Regents of the NY State Education Department to operate a school for children ages 5-21 diagnosed with an autism spectrum disorder and/or pervasive developmental disorder. The Yaldeinu School operates OPWDD programming and recently received approval from OMH to provide CMHRS-licensed services. They are also a designated provider of children's HCBS services.

The Board of the Yaldeinu School and the board of the proposed D&TC are mirror boards. The proposed diagnostic treatment center will be housed in a space separate and distinct from the Yaldeinu School. It will have its own means of entrance and egress, separate bathrooms, and will have no shared spaces with the school. The following are the other operational and/or functional components of the project:

- Yaldeinu Health Inc. is a separate legal corporation from Yaldeinu School
- The D&TC will serve the entire community, including both adults and children.
- The D&TC will be operationally independent from Yaldeinu School, however, the Yaldeinu School will provide start-up funding, deficit funding, and project cost funding.

Analysis

The primary service area is the neighborhoods of Bensonhurst and Borough Park in Kings County, and the center will focus primarily on serving the Orthodox Hasidic Jewish population. Borough Park is an HRSA-designated Health Professional Shortage Area for Primary Care and Medically Underserved Population.

The population of Kings County was 2,736,074 in 2020 and is expected to grow to 2,810,876 by 2025. According to Data USA, in 2019 93.7% of the population in Kings County has health coverage as follows:

Employer Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-Group Plans	10.5%
Military or VA	0.222%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the primary service area is lower than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs		
PQI Rates: 2017	Kings	New York State
All PQIs	1,358	1,431

The applicant projects 3,932 visits in Year One and 5,180 in Year Three with a Medicaid utilization at 72% and charity care at 2%. The applicant is committed to serving all persons in need without regard to the ability to pay or the source of payment.

Character and Competence

The board of Yaldeinu Health, Inc. is:

Board Member	Role
Moshe Erlich	Board Member
Jacob Bar Horin	Board Member
Raphael Kellman M.D.	Board Member/ Medical Director
Shulamis Peltz, Esq	Board Member
Yidel Pearlstein	Board Member
Rivky Reich	Board Member
Arye Ringel	Board Member

Dr. Raphael Kellman is a Board Member and the proposed Medical Director. He is a Physician of Integrative and Functional Medicine and is the Owner of the Kellman Wellness Center. He received his medical degree from the Albert Einstein College of Medicine and completed his residency in Internal Medicine at St. John Episcopal Hospital, Lenox Hill Hospital, and Beth Israel Medical Center.

Moshe Erlich is a Proprietor at Exclusive Tax and Bookkeeping Services and is a Primary Bookkeeper at Zichron Emanuel Foundation. He is a Board Member and Finance Director of the Yaldeinu School for Children with Autism and he is the Treasurer of Beth Medrsh Chasidai Amshinov.

Jacob Bar Horin is the Chief Financial Officer of The Yaldeinu School where his key duties include budget creation and development, implementation of strategic fundraising, oversight of all fiscal policies and procedures, expanding and managing relationships, and communication with donors and foundations.

Shulamis Peltz, Esq. is a Senior Associate Attorney at Jacob Laufer, P.C. where her responsibilities include preparing motions, attending court appearances, hearings and conducting depositions, reviewing and analyzing documents and agreements, participating in negotiations and conferences with federal and state prosecutors, legal research, counseling clients through civil and criminal processes.

Yidel Pearlstein is the Chief of Staff of Brock Pierce and the CEO of Lucky Truck Rental. He is the Executive Director of Eitz Chaim and is a Member of the Executive Board at BPJCC. He is the Chairman of the Board of Community Board 12 where he manages the board office including four full-time employees, presides over 50 board members, and ensures the board represents the interests of the 50,000 families it represents. He serves as the Secretary of the Board of Directors at the Yaldeinu School.

Rivky Reich is the Program Director of HASC/Gan Ezra, a school for children with special needs. where he is responsible for staff supervision, staff development and quality assurance, staff hiring and training, program support and guidance, and communication between staff. He also supervises and trains staff in Individualized Education Plans.

Arye Ringel is a Tax Accountant at Barry Strauss Associates where he facilitates financial planning and long-term goals for clients and specializes in tax filing, laws, regulations, and legalities. He is the Treasurer of the Board of Directors of The Yaldeinu School.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State's Office of Medicaid Management, Office of Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). The new diagnostic and treatment center will provide primary care and other medical specialties including in a Health Professional Shortage Area for Primary Care.

<h2>Financial Analysis</h2>

Total Project Cost and Financing

The total project cost, which is for renovation and the acquisition of moveable equipment, is estimated at \$547,295 further broken down as follows:

	<u>Costs</u>
Renovation & Demolition	\$260,000
Design Contingency	26,000
Construction Contingency	26,000
Planning Consultant Fees	5,000
Architect/Engineering Fees	20,000
Other Fees (Consultant, etc.)	75,000
Movable Equipment	117,780
Telecommunications	12,532
CON Fee	2,000
Additional Processing Fee	<u>2,983</u>
Total Project Costs	\$547,295

The applicant's financing plan appears as follows:

Cash Gift from Yaldeinu School	<u>\$547,295</u>
Total	\$547,295

Operating Budget

The applicant has submitted an operating budget for Yaldeinu in 2022 dollars, for Year One (2024) and Year Three (2026), summarized below. The submitted budget appears reasonable.

	Year One (2024)		Year One (2026)	
	Per Visit	Total	Per Visit	Total
Revenues				
Commercial FFS	\$165.00	\$103,785	\$165.00	\$136,950
Medicare FFS	150.00	29,550	150.00	38,850
Medicare MC	120.00	9,480	120.00	12,480
Medicaid FFS	188.00	14,852	188.00	19,552
Medicaid MC	135.22	371,979	135.22	490,969
Private Pay	\$190.00	22,420	\$190.00	28,120
Total Revenues		\$552,066		\$726,921
Expenses				
Operating	92.83	\$365,006	102.00	\$528,335
Capital	25.00	\$98,295	18.98	\$98,295
Total Expenses	117.83	\$463,302	120.97	\$626,631
Net Income		\$88,764		\$100,290
Utilization (Visits)		3,932		5,180

The following is noted concerning the submitted budget:

- Revenues are based on current reimbursement rates for primary care and other medical specialty services the applicant proposes to offer.
- The applicant confirmed that there will be no commercial managed care visits.
- Utilization assumptions are based on evaluating community needs, facility capacity, network relationships in the community, hospital affiliations, and marketing efforts.
- The expense assumptions are based on the operating experience of existing Article 28 D&TC centers
- Maimonides Medical Center will assist in referring patients from the hospital emergency room to the D&TC, when appropriate, as well as, minimizing the readmission of patients to the hospital due to the significant absence of primary care.
- The proposed operator will have an extensive marketing plan to attract clinical staff and patients to the D&TC upon opening.

Utilization broken down by payor source in years one and three is as follows:

Payor	Year One (2024)	Year Three (2026)
Commercial FFS	18.80%	18.84%
Medicare FFS	5.35%	5.34%
Medicare MC	1.72%	1.72%
Medicaid FFS	2.69%	2.69%
Medicaid MC	67.38%	67.54%
Private Pay	4.06%	3.87%
Charity Care	0.00%	0.00%
Total	100.00%	100.00%

Lease Rental Agreement

The applicant has provided the proposed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	1,310 square feet located at 600 63 rd Street, Brooklyn, New York
Lessor	63 rd Street Realty
Lessee	Yaldeinu Health, Inc.
Term	5-year term, commencing on September 1, 2022
Rental	\$4,000 monthly / \$48,000 annually (\$36.64 per sq. Ft.)
Provisions	The lessee shall be responsible for all utilities.

The tenant, Yaldeinu, and landlord, 3rd Street Realty, have entered into a proposed lease agreement for site control of the facility. The applicant has submitted an affidavit that there is no relationship between the parties other than landlord and tenant; therefore, this is an arms-length arrangement. The terms of the lease have been finalized and will be executed upon notification of contingent approval. The applicant submitted two real estate broker letters attesting to the reasonableness of the per square foot cost.

Capability and Feasibility

Total project costs of \$547,295 will be funded by a cash gift from Yaldeinu School, a related entity of the applicant. The applicant provided a gift letter from Yaldeinu School that confirms their intention to provide all necessary project costs and working capital as a gift for the establishment and construction of the proposed D&TC.

The working capital requirement of approximately \$104,439 is equivalent to two months of third-year expenses. The June 30, 2021 Certified Financial Statements of Yaldeinu School (BFA Attachment A) show the school has a positive working capital position, a positive net asset position, and an excess of revenues over expenses of \$10,115,328 with a cash balance of \$2,033,291. The March 31, 2022 Internal Financial Statements of the Yaldeinu School show the entity continued to have positive working capital, net asset, and excess revenues over expenses position. The financial statement for this period indicates the availability of sufficient funds to meet the equity contribution and any working capital needs.

The submitted budget indicates a net income of \$88,764 and \$100,290 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for the type of services they are providing, and expenses are based on operations of existing Article 28 D&TC centers. Yaldeinu Health, Inc. submitted a pro forma balance sheet (BFA Attachment B) as of the first day of operations, which indicates a positive net asset position of \$651,733. The submitted budget appears reasonable.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BHFP Attachment	Map
BFA Attachment A	June 30, 2021 Certified Financial Statements and March 31, 2022 Internal Financial Statements of the Yaldeinu School
BFA Attachment B	Yaldeinu Health, Inc. Pro Forma Balance Sheet



Project # 221212-E
Smile New York Outreach, LLC

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment **Acknowledged:** July 8, 2022

Executive Summary

Description

Smile New York Outreach, LLC (Smile), a proprietary Article 28 diagnostic and treatment center (D&TC) with a fixed site at 1808 Crotonia Parkway, Bronx (Bronx County), requests approval to transfer 100% ownership interest in the D&TC to one new member. The current sole member of Smile, Dr. Stephen Marshall, proposes to transfer his membership interest to new member Smile Outreach Holdings, LLC, whose sole member is Dr. Craig Abramowitz. Smile provides in-school preventive dental services (exams, cleanings, and sealants) and restorative care to underprivileged children in New York City schools. They are currently authorized through the School-Based Health Center Dental Program to serve children in Bronx, Kings, New York, Queens, Richmond, and Westchester Counties.

Smile's fixed site is for the delivery of restorative care that cannot be provided at the school sites and where referral to Smile's community dentist network is not preferable or practical for parents/guardians.

The ownership, before and after is as follows:

Smile New York Outreach, LLC		
<u>Current</u>		
<u>Member</u>		<u>%</u>
Stephen Marshall, DDS		100%
<u>Proposed</u>		
<u>Member</u>		<u>%</u>
Smile Outreach Holdings, LLC		100%
Craig Abramowitz, DDS (100%)		

Dr. Elliot Schlang will continue to serve as the facility's Dental Director.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no need review per Public Health Law §2801-a(4).

Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Summary
There are no project costs associated with this proposal. The purchase price for the facility operations is \$2,600,000. Reachout Healthcare America, Ltd., will be providing the funding for the purchase and will be paid back through a 10-year promissory note at a 6% interest rate.

(in 000's)	<u>Current Year (2019)</u>	<u>Year One (2023)</u>	<u>Year Three (2025)</u>
Revenues	\$11,919	\$17,009	\$21,517
Expenses	<u>\$13,726</u>	<u>\$16,422</u>	<u>\$17,766</u>
Gain/(Loss)	(\$1,808)	\$587	\$3,750

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

October 6, 2022

Program Analysis

Program Description

There will be no change in services, staffing, or the dental director as a result of this application.

Character and Competence

The proposed membership Smile New York Outreach, LLC is provided in the chart below.

<u>Member Name/Title</u>	<u>Current</u>	<u>Proposed</u>
Stephen Marshall, DDS	100.00%	0%
Smile Outreach Holding, LLC	0%	100.00%
*Craig Abramowitz, DDS (100%)		
Total	100%	100%

**Subject to Character and Competence*

Dr. Craig Abramowitz is the Vice Chairman of Dental Care Alliance where he helps support and strategize with the executive management team. He was the previous Co-CEO of Dental Care Alliance and was responsible for the day-to-day operations of dental practices. Previously, he was the CEO of Northeast Dental Management. He received his dental degree from the New York University College of Dentistry.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State's Office of Medicaid Management, Office of Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Analysis

Operating Budget

The following is a summary of the submitted operating budget, presented in 2022 dollars, for the current year and years one and three after the change in membership:

	<u>Current Year (2019)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$152.16	\$9,054,353	\$166.00	\$13,159,339	\$166.00	\$16,646,592
Medicaid MC	\$152.15	\$691,990	\$157.70	\$955,455	\$157.70	\$1,208,652
Commercial	\$152.16	\$2,172,481	\$152.16	\$2,894,103	\$152.16	\$3,661,046
Total		\$11,918,824		\$17,008,896		\$21,516,290

	<u>Current Year (2019)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Expenses						
Operating	\$145.30	\$13,428,151	\$131.59	\$16,200,824	\$112.66	\$17,545,266
Capital	\$3.23	\$298,294	\$1.79	\$220,853	\$1.42	\$220,853
Total	\$148.53	\$13,726,445	\$133.38	\$16,421,677	\$114.08	17,766,119
Net income/(loss)		(\$1,807,621)		\$587,219		\$3,750,172
Utilization (Visits)		92,418		123,116		155,742

The following is noted for the submitted operating budget:

- Smile New York was closed from March 2020 until November 2020 and reopened at a very reduced capacity from November 2020 through December 31, 2021, due to the COVID-19 pandemic. As such, Smile New York is choosing to use 2019 as the basis for the current year. Smile New York expects to be operating at 100% capacity by the fall of 2022. It is also important to note that, since 2019, Smile New York has added 15 schools to their roster.
- Years One and Three budgets are based on the historical performance of the facility and the return to normalization (post-Covid 19 operations).
- Projected Medicaid revenue for Years One and Three are based on the facility's current 2022 Medicaid payor rates.
- Commercial payor rates for Years One and Three are based on Smile New York's current year rates.

Utilization by payor source for current and future years is expected to remain the same, as follows:

<u>Payor</u>	<u>%</u>
Medicaid FFS	64.39%
Medicaid MC	4.92%
Charity Care	15.24%
Commercial	15.45%
Total	100.00%

Membership Interest Purchase Agreement

The applicant submitted an executed Membership Interest Purchase Agreement for the transfer of ownership, to be effectuated upon PHHPC approval. The terms of the agreement are as follows:

Date:	March 23, 2022
Seller:	Stephen Marshall, DDS
Buyer:	Smile Outreach Holdings, LLC
Assets Assumed:	100% Membership interest in Smile New York Outreach, LLC
Excluded Assets:	None
Liabilities Assumed:	All liabilities associated with the business
Excluded Liabilities	N/A
Purchase Price:	\$2,600,000
Payment of Purchase Price:	Cash (\$1,300,000 paid on execution date of agreement (non-refundable) and \$1,300,000 upon closing)

Promissory Note

The funding for the purchase will come from a promissory note, the applicant has submitted a draft promissory note. The terms of the note are detailed below:

Date:	March 17, 2022
Payor	Smile Outreach Holdings, LLC
Payee	Reachout Healthcare America, Ltd.
Term	10 years at 6% interest
Amount:	\$2,600,000

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. There are currently no outstanding Medicaid liabilities for the facility as of August 12, 2022.

The applicant indicated that the facility currently has a software license and services agreement with Reachout Healthcare America, Ltd. that will continue to be in effect upon PHHPC approval of this application, and there are no consulting or administrative agreements.

Capability and Feasibility

Smile Outreach Holdings, LLC will acquire 100% membership interest in Smile New York Outreach, LLC for \$2,600,000 as detailed in the Membership Interest Purchase Agreement. There are no project costs associated with this proposal. Smile Outreach Holdings, LLC's sole member is Dr. Craig Abramowitz.

Working capital requirements are estimated at \$2,736,946 based on two months of Year One expenses. The proposed member will provide \$2,736,946 from his net worth. BFA Attachment A is the net worth statement for the proposed new owner, which shows that the applicant has sufficient resources to meet the working capital requirements.

BFA Attachment C is the Pro-forma balance sheet of Smile New York Outreach, LLC, which indicates a negative member's equity of \$2,962,675 as of the change of ownership. The negative member's equity situation is primarily the result of Smile New York being closed from March 2020 until November 2020 and upon reopening in November 2020 was operating at significantly reduced capacity due to the COVID-19 pandemic and its effects on New York City schools Smile New York's financial results have significantly improved in the first half of the calendar year 2022 with a positive \$1.1M net income for Smile New York for the period of January 1, 2022 through July 31, 2022. The sole member of the proposed buyer, Dr. Abramowitz, is aware of the negative equity circumstance and believes the post-COVID recovery and financial position of Smile New York will continue to improve allowing him to continue meeting the dental care needs of underserved school children in the service area.

The budget indicates a net income of \$587,219 and \$3,750,172 will be achieved during Years One and Three respectively. The budget appears reasonable.

BFA Attachment B is Smile New York Outreach, LLC's 2020-2021 certified financial statements and their 1/1/2022-7/31/2022 internal financial statements. The facility generated an average operating loss of \$829,612 and had average negative net asset and working capital positions of \$3,373,366 and \$287,437, respectively for the 2020-2021 period shown. The 1/1/2022-7/31/2022 internal financial statements show that the entity generated an operating gain of \$1,086,798 and had a negative net asset position and a positive working capital position of \$2,704,301 and \$363,005, respectively for the period shown. The losses for 2020-2021 are due to the impact of Covid-19 and as of July 31, 2022, the facility has begun to improve operations and has achieved a positive net income.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Net Worth of Proposed Member of Smile New York Outreach, LLC
BFA Attachment B	2020 - 2021 certified and the 1/1/2022-7/31/2022 internal financial statements for Smile New York Outreach, LLC
BFA Attachment C	Pro Forma Balance Sheet for Smile New York Outreach, LLC



Project # 221184-E
Emerest Certified Home Health Care of NY LLC d/b/a
Royal Care Certified Home Health Care of NY

Program: Certified Home Health Agency
Purpose: Establishment

County: Bronx
Acknowledged: June 10, 2022

Executive Summary

Description

Emerest Certified Home Health Care of NY, LLC., (Emerest CHHA) d/b/a Royal Care Certified Home Health Care of NY, a New York limited liability company, requests approval to be established as the new operator of Cabrini of Westchester d/b/a Cabrini Certified Home Health Agency (Cabrini CHHA), an Article 36 Certified Home Health Agency (CHHA) with an office at 115 South Broadway, Dobbs Ferry, (Westchester County). The seller, a not-for-profit corporation, also operates a 304-bed, residential health care facility (RHCF) located at the same address. The applicant plans to relocate the CHHA operations to 798 Southern Boulevard, Bronx (Bronx County).

On April 11, 2022, Cabrini of Westchester entered into an Asset Purchase Agreement (APA) with Emerest Certified Home Health Care of NY, LLC., for the sale and acquisition of the CHHA operating assets for \$3,500,000. The transaction will be effectuated upon the Public Health and Health Planning Council (PHHPC) approval of this application.

Cabrini CHHA is currently authorized to serve the Bronx, New York, and Westchester Counties with the following licensed services: Home Health Aide, Medical Social Services, Medical Supply, Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Speech Pathology, and Personal Care. There will be no changes in the counties served and licensed services.

The proposed operator is as follows:

Emerest Certified Home Health Care of NY, LLC.	
<u>Members</u>	<u>%</u>
Chaim Klein	50%
Yankel Bernath	50%

These proposed members are also current members of Royal Care Certified Home Health Care, LLC, the operator of a licensed CHHA serving Nassau and Queens counties.

OPCHSM Recommendation
Contingent Approval

Need Summary

This change in ownership will allow the applicant to serve residents in the three-county service area, maintaining services currently provided by Cabrini CHHA.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2)(b).

Financial Summary

Emerest Certified Home Health Care of NY, LLC., will acquire the CHHA's operations for \$3,500,000, funded by owner's equity in businesses 100% owned by the proposed members. A deposit of \$1,000,000 has been

paid, with the \$2,500,000 balance to be paid at closing. There are no project costs associated with this application.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,303,726	\$5,370,870
Expenses	<u>1,392,049</u>	<u>4,450,007</u>
Gain/(Loss)	(\$88,323)	\$920,863

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed administrative service agreement acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an amended and executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

October 6, 2022

Need and Program Analysis

Background and Analysis

Cabrini Home Health Agency is approved to provide services in Westchester, Bronx, and New York counties. Upon approval of this application, Emerest Certified Home Health Care of NY, LLC will continue to provide Home Health Aide, Medical Social Services, Medical Supplies Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Speech Pathology, and Personal Care services to the same counties.

Historical and Projected Patient Visits by Payor Mix						
By Payor	2019	2020	2021	2022*	Year 1	Year 3
Traditional Medicare	5,078	3,115	2,577	1,199	4,101	16,891
Medicare MC	832	676	831	468	1,532	6,167
Medicaid Managed Care	355	339	173	42	631	2553
Commercial/Private HMO/Other	343	331	82	54	226	909
Total	6,608	4,461	3,663	1,763	6,490	26,520

* 6 Months of Reporting
Source: Applicant

Historical and Projected Visits Per Patient						
	2019	2020	2021	2022*	Year 1	Year 3
Total Visits	6,608	4,461	3,663	1,763	6,490	26,520
Total Patients	390	300	290	132	805	3,240
Visits Per Patient	17	15	13	13	8	8

* 6 Months of Reporting
Source: Applicant

The applicant projects 805 patients in Year One and 3,240 in Year Three. According to the applicant, the projected increased patient volume is based on Emerest building the operations of the agency to full capacity in a region with a significant need for services. It is also informed by their experience operating Royal Care Certified Home Health Care, LLC (another CHHA) in Nassau and Queens and takes into account the current labor market.

Specific ways Emerest anticipates meeting the projected volume are as follows:

- The agency will utilize approaches employed by Royal Care, which include, but are not limited to, robust social media engagement, a competitive compensation package with numerous incentive payments, and effective mentoring throughout employment.
- Implement a training and staff development program to maximize retention and ensure a competent and skilled workforce. Emerest will utilize an electronic platform for orientation and continuous skill development for staff.
- Utilize a reward program for staff recognition and appreciation, Excellence in Care, which is in place at Royal Care and will be replicated at Emerest. In recognition of top performers and acknowledgments received from patients, an active recognition program will be implemented that provides rewards for exemplary performance. Emerest will implement this successful approach for attracting and retaining staff at start-up.
- Policies and procedures will focus on:
 - Ease of admission
 - Timeliness of service initiation
 - Coordination of services
 - Helpfulness of staff
 - Quality of care

- According to the applicant, Emerest will leverage Royal Care's current referral sources in addition to established relationships from the Cabrini CHHA.

Prevention Quality Indicators (PQIs) use data from hospital discharges to identify admissions that might have been avoided through access to high-quality outpatient care. As seen in the table below, Westchester County has a lower-than-average PQI rate indicating that its primary care and outpatient services perform better than the state average.

Avoidable Hospital Admissions per 100,000 Adults for all PQIs		
PQI Rates: 2017	Westchester County	New York State
All PQIs	1,250	1,431

Character and Competence Review

The membership of Emerest Certified Home Health Care of NY LLC is as follows:

Yankel Bernath aka Jack Bernath (50%)

Chief Operating Officer, The Royal Care, Inc. (LHCSA)

Affiliations

- Royal Care Certified Home Health Care, LLC (CHHA)
- The Royal Care, Inc. (LHCSA)
- The Royal Care FI, LLC (Fiscal Intermediary)
- Emerest Home Care of Connecticut LLC (Homemaker Companion Agency)
- Emerest Health of New Jersey LLC d/b/a Bettercare Home Health (Health Care Service Firm)
- Emerest Health of Pennsylvania LLC (Home Care Services)
- Emerest Health of Missouri LLC (Home Care Services)
- Emerest Health CDS of Missouri LLC (Consumer Directed Services)

Chaim Klein aka Josh Klein (EMT) (50%)

Chief Executive Officer, The Royal Care, Inc. (LHCSA)

Affiliations

- Royal Care Certified Home Health Care, LLC (CHHA)
- The Royal Care, Inc. (LHCSA)
- The Royal Care FI, LLC (Fiscal Intermediary)
- Emerest Home Care of Connecticut LLC (Homemaker Companion Agency)
- Emerest Health of New Jersey LLC d/b/a Bettercare Home Health (Health Care Service Firm)
- Emerest Health of Pennsylvania LLC (Home Care Services)
- Emerest Health of Missouri LLC (Home Care Services)
- Emerest Health CDS of Missouri LLC (Consumer Directed Services, MO)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

The information provided by the Department's Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

The States of Connecticut, New Jersey, Pennsylvania, and Missouri did not respond to the out-of-state compliance request. The applicant submitted affidavits attesting to the compliance history of all out-of-state healthcare facilities. The applicant reported no history of enforcement for any affiliated entities.

The information provided by the Bureau of Emergency Medical Services indicates that Chaim Klein aka Josh Klein holds an EMT license (#367187) and there has never been any disciplinary action taken against this individual or their license.

CHHA Quality of Patient Care Star Ratings	
CHHA Name	Quality of Care Rating
Cabrini of Westchester d/b/a Cabrini Certified Home Health Agency	2 out of 5 stars
Royal Care Certified Home Health Care, LLC	2.5 out of 5 stars

* CMS data as of July 20, 2022

A review of the personal qualifying information indicates that the applicant has the required character and competence to operate a certified home health agency.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2). This change in ownership will allow the applicant to expand the current services and continue to meet the needs of residents in the three-county service area.

Financial Analysis

Operating Budget

The applicant has submitted the CHHA's current results for 2020 and the projected first and third-year operating budgets, in 2022 dollars, as summarized below:

	<u>Current Year</u> 2020	<u>Year One</u> 2023	<u>Year Three</u> 2025
<u>Revenues</u>			
Medicaid -MC	0	\$69,145	\$279,720
Medicare-FFS	\$810,650	1,056,611	4,374,870
Medicare-MC	0	165,510	666,430
Commercial-FFS	0	5,050	20,690
Private	0	7,410	29,160
All Other	209,894	0	0
Bad Debt	<u>-326,908</u>	<u>0</u>	<u>0</u>
Total Revenues	\$693,636	\$1,303,726	\$5,370,870
<u>Expenses</u>			
Operating	\$1,424,771	\$1,380,049	\$4,423,607
Capital	1,608	12,000	26,400
Total Expenses	\$1,426,379	\$1,392,049	\$4,450,007
Net Income or (Loss)	<u>(\$732,743)</u>	<u>(\$88,323)</u>	<u>\$920,863</u>
Utilization - Cases	300	805	3,240
Utilization - Visits	4,461	6,490	26,520
Average Revenue per Visit	\$155.49	\$200.88	\$202.52
Average Expense per Visit	\$319.74	\$214.49	\$167.80

The following is noted concerning the submitted CHHA budget:

- The current Year is based on Cabrini's 2020 experience
- The projected revenue and utilization assumptions by payor source are based on the proposed owners' historical experience operating a CHHA in the New York Metro area.
 - The CHHA will focus on short-term CHHA cases funded by traditional Medicare, as well as, Medicare Managed Care
 - Year One will be a rebuilding year, with a commitment to increase the census from a starting point of 20 cases to up to 95 cases per month by the end of Year One.

- Year Three represents a stabilized year of 270 cases per month.
- Medicare revenue is based on an average episodic payment of approximately \$2,419. It was derived from 2021 data from the Medicare paid claims reported on the Provider Statistical and Reimbursement (PS&R) report. The same average episodic rate of \$2,419 was used in projecting Year One and Three revenues.
- Medicaid Managed Care revenue is based on the fee-for-service historical experience of the owner's existing CHHA in the NY Metro Area.
- Expense assumptions for direct care, direct administration, and contracted services are based upon historical experience trended to 2022 dollars. Other expenses such as rent and back-office support are estimated based on the terms included in Emerest CHHA's administrative service agreement with the Royal Care Certified Home Health Care, LLC.

Utilization by payor source for the first and third years is anticipated as follows:

Payor	<u>Current Year</u> (2020)	<u>Year One</u> (2023)	<u>Year Three</u> (2025)
Medicaid MC	0%	9.72%	9.63%
Medicare FFS	69.83%	63.19%	63.69%
Medicare MC	0%	23.61%	23.25%
Commercial FFS	0%	0.72%	0.72%
Private	0%	0.80%	0.77%
All Other	30.17%	0%	0%
Charity	<u>0%</u>	<u>1.96%</u>	<u>1.94%</u>
Total	100%	100%	100%

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the seller's CHHA business assets, effective upon PHHPC approval. The terms are summarized below:

Date:	April 11, 2022
Seller:	Cabrini of Westchester
Purchaser:	Emerest Certified Home Health Care of NY, LLC.
Assets Transferred:	All rights, title, and interest in the CHHA designated assets. Including CHHA's operating authority, rate increases after the closing date, CHHA's assets, inventory, personal property, copies of permitted business records, policy & procedures, intellectual property, rights and trademarks, computers and software, assignable contracts, telephone and fax numbers, security deposits, and goodwill.
Excluded Assets:	All assets associated with businesses other than the CHHA.
Assumed Liabilities:	Obligations and liabilities incurred by the CHHA on or after the closing date.
Purchase Price:	\$3,500,000
Payment:	\$ 1,000,000 effective date of APA (\$750,000 escrow deposit & \$250,000 to seller) \$ 2,500,000 due at closing.

The CHHA's purchase price is proposed to be satisfied via owner's equity in businesses 100% owned by the proposed members. BFA Attachments A-1 and A-2 show the proposed members' net worth summary and a consolidated financial presentation from 2021, financial statements, and March 31, 2022, internal statements for the business owned. The proposed members of Emerest Certified Home Health Care of NY, LLC have access to sufficient liquid resources to meet the equity requirement.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor under Article 36 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 1, 2022, the facility had no outstanding Medicaid liabilities.

Lease Agreement

The applicant has submitted an executed lease for the proposed site:

Date:	January 1, 2020
Premises:	5,000 sq ft. located at 798 Southern Boulevard, Bronx, NY 10455
Landlord:	Emerest Properties, LLC
Lessee:	The Royal Care, Inc.
Term:	Ten years. Option to extend for one (1) additional term of 10 years.
Rental:	Current Rent \$125,000 per annum, Renewal at \$137,000 per annum
Provisions:	The tenant is responsible for maintenance, utilities, and real estate taxes, insurance.

The applicant has attested this lease is a non-arm's length arrangement, as the applicant members are owners of the real property.

Sub-Lease Agreement

The applicant has submitted an executed sub-lease agreement for the proposed site, the terms of which are summarized below:

Date:	May 1, 2022
Premises:	250 sq. ft located at 798 Southern Boulevard, Bronx, NY 10455
Sub-Landlord:	The Royal Care, Inc.
Sub-Lessee	Emerest Certified Home Health Care of NY LLC
Terms:	Ten years
Rental	\$12,000 per year
Provisions:	Sub Lessee is responsible for insurance and rubbish removal.

The applicant has attested that the lease is a non-arm's length arrangement, as a family member is the owner of the Sub-Landlord.

Administrative Service Agreement

The applicant provided a draft Administrative Service Agreement (ASA). Below terms are summarized:

Consultant:	Royal Care Certified Home Health Care, LLC
Facility:	Emerest Certified Home Health Care of NY, LLC
Services:	Assist with: record keeping and accounting, provide payroll and human resources services, marketing services including websites, technology support services, vendor management, and office support services.
Compensation:	Fixed monthly fee of \$100 plus reimbursement of associated expenses with providing services
Terms:	Three years with a three (3) automatic renewal.

There is common ownership, between the applicant and the ASA provider. The applicant has submitted an executed attestation acknowledging that the statutory and regulatory required reserve powers cannot be delegated. They will not engage in any illegal delegations of authority. The Licensed Operator retains ultimate authority, responsibility, and control.

Capability and Feasibility

Emerest Certified Home Health Care of NY LLC will acquire the CHHA's operations for \$3,500,000, funded by owner's equity in businesses 100% owned by the proposed members. A deposit of \$1,000,000 has been paid, with the \$2,500,000 balance to be paid at closing. The consolidated financial presentation supports sufficient liquid resources to meet the remaining obligation. There are no project costs associated with this application.

The total working capital requirement is estimated at \$232,008 based on two months of first-year expenses of \$232,008. Working capital will be funded via members' equity in existing businesses. The cash flow analysis shows first-year loss is the result of start-up expenses that incur during the first three months. The balance of the year generated an average monthly profit of \$9,602. A review of attachments A-1 and A-2, members' net worth, and the consolidated financial presentation reveals sufficient resources to meet the equity requirements.

The submitted budget projects an \$88,323 loss in the first year and a \$920,863 profit by the third year. BFA Attachment B is Emerest Certified Home Health Care of NY LLC's Pro-forma balance sheet, which shows the entity will start with \$3,752,000 in equity. The budget appears to be reasonable.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A-1	Emerest Certified Home Health Care of NY LLC Proposed Members' Net Worth
BFA Attachment A-2	Emerest Certified Home Health Care of NY LLC Proposed Members Consolidated Financial Presentation of Business 100% Owned.
BFA Attachment B	Pro-Forma Balance Sheet



MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *Kathy Marks*

Date: September 2, 2022

Subject: Proposed Dissolution of J.G.B. Health Facilities Corporation

The J.G.B. Health Facilities Corporation (“JGB”) requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c), § 1003 and 10 NYCRR Part 650.

JGB is a New York not-for-profit corporation incorporated on November 14, 1974, under the name J.G.B. Nursing Home Corporation with a corporate purpose to operate an Article 28 Nursing Home. The filing of an Amended and Restated Certificate of Incorporation by JGB on September 18, 1979, changed its name to J.G.B. Health Facilities Corporation and also promulgated a change in the corporate purpose to improve the physical and mental conditions of adult blind persons as well as to operate a skilled nursing facility catering to those same persons.

In 2007, JGB sought to voluntarily downsize since the nursing home facility required a significant amount of capital improvements to safely operate and the ‘Commission on Health Care Facilities in the 21st Century’ issued its report finding that its nursing home county, Westchester County, was over-bedded by 653 RHCF beds. Based on the foregoing, JGB entered into a partnership with Jewish Home & Hospital (“JHH”) to carry out its mission on a smaller scale (downsizing from 219 RHCF beds and relocating 38 RHCF beds). This arrangement, as proposed in certificate of need application number 071111-C, was approved by the Public Health Council on December 19, 2007.

Due to the partnership between JGB and JHH, the Board of Directors of JGB recommended to its sole corporate member, Jewish Guild for the Blind, that it should sell the nursing home facility. The member approved of this action on July 28, 2008. JGB entered a Contract of Sale in July 2008. The State of New York Supreme Court authorized the sale in Order Index No. 116458/08 which was Amended in 2010. Dissolution of JGB was not contemplated even after the sale of substantially all of its assets since four Adult Day Health Care Programs remained operational. Thereafter, an affiliated entity, J.G.B Rehabilitation Corporation (“JGB Rehab”), requested and received approval of certificate of need application number 171364 (final approval dated August 14, 2017) to allow JGB Rehab to take over operation of the four JGB Adult Day Health Care programs.

On September 28, 2017, JGB Rehab undertook all remaining operations formerly carried out by JGB and, subsequently, JGB no longer had any revenue or assets. The Board of Directors of JGB approved and authorized dissolution and authorized the filing of the Certificate of Dissolution by unanimous written consent dated April 27, 2021.

Currently, JGB has no assets or liabilities.

Attached is an electronic letter dated September 8, 2021, from Nicholas P. Hopeck which explains the intent of J.G.B. Health Facilities Corp. to dissolve. The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, a proposed Certificate of Dissolution, and a resolution of the board of directors of JGB authorizing the dissolution are included.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, or the Certificate of Dissolution.

Attachments.



DELANEY CORPORATE SERVICES, LTD.

99 Washington Ave., Ste. 805A, Albany, NY 12210
800-717-2810 • 518-465-9242 • 518-465-7883 (fax)
nick@delaneycorporate.com

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September 8, 2021

STATE OF NEW YORK DEPARTMENT OF HEALTH

Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
Corning Tower, Room 1805
Albany, New York 12237
518-402-0964

RE: J.G.B. HEALTH FACILITIES CORPORATION

Dear Ms. Leonard,

I hereby respectfully request your consent to the filing of the attached certificate of dissolution for the above reference NYS Not-for-Profit Corporation. A copy of all charter documents from the New York Secretary of State and supporting documents are attached.

If you have any questions or require further information, please do not hesitate to contact me. Otherwise, please issue your consent to the undersigned at your earliest convenience.

Sincerely,

Nicholas P. Hopeck
Vice President
nick@delaneycorporate.com

In the Matter of Application of)
))
J.G.B. HEALTH FACILITIES) VERIFIED PETITION
CORPORATION))
))
For Approval of Certificate of)
Dissolution pursuant to)
N.Y. Not-for-Profit Corp.)
Law § 1002)

TO THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,
OFFICE OF THE ATTORNEY GENERAL at _____

Petitioner J.G.B. HEALTH FACILITIES CORPORATION by its General Counsel and Chief Compliance Officer, JOEL LEVI, ESQ., respectfully alleges:

1. That the Petitioner, J.G.B. HEALTH FACILITIES CORPORATION, whose principal address is 250 West 64th Street, New, York County of New York, State of New York, is a charitable corporation duly organized and existing under and by virtue of the Not-for-Profit Corporation Law of the State of New York, its certificate of incorporation having been filed by the Department of State on November 14, 1974 under the name J.G.B. NURSING HOME CORPORATION and upon the filing of an amended certificate of incorporation dated September 18, 1979, the corporation changed its name to J.G.B. HEALTH FACILITIES CORPORATION. A copy of the certificate of incorporation and all amendments thereto and a copy of the current by-laws are attached as **EXHIBIT A**.

2. That its amended certificate of incorporation designates the petitioner corporation as a Type B corporation, its purposes being to improve physical and mental condition of adult blind persons. There are no specific requirements in said certificate with respect to distribution of assets in the certificate of incorporation except that Article V of the amended and restated certificate of Incorporation requires that upon dissolution, the assets be distributed to and entity exempt from Tax under IRC sections 170(b)(1)(A) and 501(c)(3) and which has been in existence for at least 60 calendar months;

3. That the names and addresses of all the Directors and Officers of said J.G.B. HEALTH FACILITIES CORPORATION are as follows:

Directors

Name	Office Address
James M. Dubin Chairman	250 West 64 th Street, New York, NY
Calvin W. Roberts, MD, President & CEO	250 West 64 th Street, New York, NY
Lawrence E. Goldschmidt, Dep.Chair,Treas	250 West 64 th Street, New York, NY _

Pauline Raiiff, Immediate Past Chair	250 West 64 th Street, New York, NY
Marios Damianides, Asst Treasurer	250 West 64 th Street, New York, NY
Eric Maidenberg, Secretary	250 West 64 th Street, New York, NY
Thomas S.T. Gimbel	250 West 64 th Street, New York, NY
Thomas G. Kahn	250 West 64 th Street, New York, NY
Ronald Weiner, Deputy Chair	250 West 64 th Street, New York, NY

Officers [other than those noted above]

Name and Title	Office Address
Paul Misiti, Chief of Staff	250 West 64 th Street, New York, NY
Himanshu Shah, Chief Financial Officer	250 West 64 th Street, New York, NY
Maura Sweeney, Chief Program Officer	250 West 64 th Street, New York, NY
Joel Levi, Gen. Counsel, Chief Compliance Officer	250 West 64 th Street, New York, NY
Sarah Spicehandler, Assistant Secretary	250 West 64 th Street, New York, NY
Esmeralda Ballate, Assistant Secretary	250 West 64 th Street, New York, NY

4. That the purposes of the corporation are set forth in Article II of the amended certificate of incorporation and are generally to improve the mental and physical condition of blind persons.

5. That from the date of its incorporation, the petitioner conducted its activities and did in fact fulfill its functions and carry out the purposes for which it was formed until on or about September 27, 2017, J.G.B. HEALTH FACILITIES CORPORATION, subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, operated adult day healthcare programs in New York City, Buffalo, Albany and Niagara Falls until September 27, 2017. During 2017, J.G.B REHABILITATION CORPORATION, another subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, requested and received approval from NYSDOH to take over operation of J.G.B. HEALTH FACILITIES CORPORATION's programs., and transfer the four adult healthcare day programs to J.G.B REHABILITATION CORPORATION. Commencing on September 28, 2017 J.G.B REHABILITATION CORPORATION undertook all the operations formerly carried out by J.G.B. HEALTH FACILITIES CORPORATION. J.G.B. HEALTH FACILITIES CORPORATION's sources of revenue had been payments from Medicaid and other

third-party providers. When the operation of the programs were transferred, J.G.B. HEALTH FACILITIES CORPORATION no longer had revenue or assets and ceased to operate.

6. That by reason of the foregoing the petitioner corporation necessarily suspended its activities and has become totally inoperative and for all intents and purposes has ceased to function and has no assets and plans to dissolve.

7. That on the May 14, 2021, at a special meeting of the Board of Directors, duly called for the purpose of formulating and adopting a plan for the dissolution and distribution of assets of J.G.B. HEALTH FACILITIES CORPORATION, at which meeting the full board was present, such a plan was formulated and adopted. A resolution of the Board of Directors of petitioner corporation favoring dissolution and the adoption of the plan as aforesaid was placed on the record of said corporation, which resolution recommended to the members that said corporation be dissolved and its affairs wound up and, further directed that a special meeting of the sole corporate member be held to vote on the question as to whether said corporation should be dissolved and its assets distributed in accordance with the aforesaid plan. A copy of said plan and Board resolution adopting same, with a statement of the vote thereon certified by the Secretary, is annexed hereto as **EXHIBIT B**.

8. Thereafter a special meeting of the sole corporate member was held on the [date of special meeting], in accordance with a notice of meeting directed to the membership, and at said special meeting of the sole corporate member, the aforesaid plan for the dissolution of J.G.B. HEALTH FACILITIES CORPORATION was approved by the affirmative vote of two-thirds of the votes cast by the sole corporate member entitled to vote thereon, said votes so cast being at least equal to the requisite quorum, and a resolution was duly adopted to that effect. A copy of said resolution, with a statement of the vote thereon certified by the Secretary of the sole corporate member, is annexed hereto as **EXHIBIT C**.

9. That J.G.B. HEALTH FACILITIES CORPORATION has filed a financial report on Form CHAR500 for the year 2017, with all required attachments, with the Charities Bureau showing no assets or liabilities as of the date hereof.

10. That annexed hereto as **EXHIBIT D** is a complete and detailed financial statement of J.G.B. HEALTH FACILITIES CORPORATION as of December 31, 2017 together with the consolidated Financial Statement of LIGHTHOUSE GUILD INTERNATIONAL, INC and AFFILIATES for the same period, the date on which the corporation last had assets.

11. No property of the corporation was held for a specific use.

12. The approval of the aforesaid plan by NYS Department of Health whose approval was required for the formation of the corporation is attached to the Certificate of Dissolution a copy of which is annexed hereto as **EXHIBIT E**. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-For-Profit Corporation Law Section 1003.

13. That no previous application has been made for the relief prayed for herein.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of J.G.B. HEALTH FACILTIES CORPORATION a not-for-profit corporation pursuant to Not-For-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, J.G.B. HEALTHFACILTIES CORPORATION has caused this Petition to be executed the ____ day of _____, 2021 by

JOEL LEVI, ESQ., General Counsel and Chief
Compliance Officer

Verification and Certification

STATE OF NEW YORK)
 Ss:
COUNTY OF NEW YORK)

JOEL LEVI, ESQ , being duly sworn, deposes and says:

I am the General Counsel and Chief Compliance Officer of J.G.B. HEALTH FACILTIES CORPORATION, the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except any matters that are stated on information and belief and, as to those matters, I believe them to be true, and I hereby certify under penalties of perjury that the Plan of Dissolution was duly authorized and adopted by the Board of Directors and by the sole corporate member of the Corporation.

JOEL LEVI, ESQ

Sworn to before me
this ____ day of _____, 2021

Notary Public

Elisabeth St. B. McCarthy, Esq.
Attorney for Petitioner
Gordon, Herlands & Randolph LLP
355 Lexington Avenue, 10th Floor
New York, NY 10017
212-986-1200
emccarthy@gordonherlands.com

CERTIFICATE OF DISSOLUTION

OF

J.G.B. HEALTH FACILITIES CORPORATION

Under Section 1003 of the Not-for-Profit Corporation Law

I, Calvin W. Roberts Director and President and CEO of J.G.B. HEALTH FACILITIES CORPORATION, hereby certify:

FIRST: The name of the corporation is J.G.B. HEALTH FACILITIES CORPORATION, (the "Corporation").

SECOND: The Certificate of Incorporation of the Corporation was filed by the New York State Department of State on November 14, 1974 under the name J.G.B. NURSING HOME CORPORATION. By the filing of an Amended and Restated Certificate of Incorporation on September 18, 1979, the Corporation changed its name to J.G.B. HEALTH FACILITIES CORPORATION.

THIRD: The names, titles and addresses of each of the directors and officers of the Corporation are as follows:

Directors

<u>Name</u>	<u>Title</u>	<u>Address</u>
Calvin W. Roberts	President and CEO	250 West 64 th Street New York, New York 10023
James M. Dubin	Chairman	250 West 64 th Street New York, New York 10023
Lawrence E. Goldschmidt	Deputy Chairman, Treasurer	250 West 64 th Street New York, New York 10023
Marios Damianides	Assistant Treasurer	250 West 64 th Street New York, New York 10023

Eric Maidenberg	Secretary	250 West 64 th Street New York, New York 10023
Pauline Raiff	Immediate Past Chair	250 West 64 th Street New York, New York 10023
Thomas S.T.Gimbel	Director	250 West 64 th Street New York, New York 10023
Thomas G. Kahn	Director	250 West 64 th Street New York, New York 10023
Ronald Weiner	Deputy Chair	250 West 64 th Street New York, New York 10023

Officers [other than those noted above]

<u>Name</u>	<u>Title</u>	<u>Address</u>
Paul Misiti	Chief of Staff	250 West 64 th Street New York, New York 10023
Himanshu Shan	Chief Financial Officer	250 West 64 th Street New York, New York 10023
Maura Sweeney	Chief Program Officer	250 West 64 th Street New York, New York 10023
Joel Levi	Gen. Counsel, Chief Compliance Officer	250 West 64 th Street New York, New York 10023
Sarah Spicehandler	Assistant Secretary	250 West 64 th Street New York, New York 10023
Esmeralda Ballate	Assistant Secretary	250 West 64 th Street New York, New York 10023

FOURTH: At the time of dissolution, the Corporation is a Type B New York Not-for-Profit corporation.

FIFTH: At the time of the authorization of its Plan of Dissolution, the Corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

SIXTH: The Corporation elects to dissolve. A Plan of Dissolution was authorized by the unanimous vote of the Board of Directors at a meeting on April 27, 2021. The Corporation has one corporate member. The Plan of Dissolution was authorized by the unanimous consent of the Board of Directors of the sole member at a meeting on April 27, 2021.

SEVENTH: At the time of dissolution, the Corporation had no assets and no liabilities.

EIGHTH: Approval of the dissolution of the Corporation is required to be obtained from the New York State Department of Health, whose approval is attached hereto.

NINTH: Prior to the delivery of this Certificate of Dissolution to the Department of State for filing, the dissolution of the Corporation is required to be approved by the Attorney General of the state of New York. Said approval is attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of J.G.B. HEALTH FACILITIES CORPORATION, this 2nd day of June, 2021.



Name: Calvin W. Roberts
Title: President and CEO

EXHIBIT A

**PLAN OF DISSOLUTION
AND
DISTRIBUTION OF ASSETS
OF
J.G.B. HEALTH FACILITIES CORPORATION**

TO BE RECOMMENDATION TO MEMBERSHIP

The Board of Directors of J.G.B. HEALTH FACILITIES CORPORATION at a special meeting duly convened on the 27th of April, 2021 to consider the advisability of voluntarily dissolving this corporation and it being the unanimous opinion of the Board that it is advisable and in the best interests of the corporation to effect such a resolution, and the Board having adopted, by unanimous vote, a plan for a voluntary dissolution of this corporation, does hereby recommend to the membership that this corporation be dissolved in accordance with the following plan:

- A. The corporation has no assets to distribute, and no liabilities at the time of dissolution.
- B. Upon resolution of the Board of Directors adopting this Plan of Dissolution, the Board must submit it to a vote of the sole corporate member for approval.
- C. After the adoption of this Plan by the Board of Directors and the approval of this Plan by the affirmative vote of at least two-thirds of the votes cast at a meeting of the sole corporate member, said votes so cast at said meeting being equal to the requisite quorum, the Plan of Dissolution, the Certificate of Dissolution with requisite approvals noted thereon, and a Petition of Dissolution with appropriate attachments, including corporate governing documents, a final financial report and Board and Membership approvals shall be filed with the Attorney General of the State of New York pursuant to the Not-for-Profit Corporation Law of the State of New York.
- D. The Board recommends the following plan be approved by the membership:
 1. The corporation has fulfilled and discharged its contracts, and discharged its liabilities and no assets or liabilities remain.
 2. All outstanding debts owing to the corporation have been collected.
 3. There are no: (i) holders of certificates of subvention; (ii) holders of capital certificates; and (iii) members entitled to assets

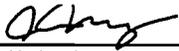
4. There is no creditor or member who is unknown or cannot be found, and no assets need be distributed to the Comptroller of the State of New York pursuant to the Abandoned Property Law of such State.
 5. J.G.B. HEALTH FACILITIES CORPORATION was incorporated on November 14, 1974 as J.G.B. NURSING HOME CORPORATION and on September 18, 1979 changed its name to J.G.B. HEALTH FACILITIES CORPORATION and operated adult day healthcare programs in New York City, Buffalo, Albany and Niagara Falls until September 27, 2017. During 2017, J.G.B. REHABILITATION CORPORATION, another subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, requested and received approval from NYSDOH to take over operation of J.G.B. HEALTH FACILITIES CORPORATION's programs, and transfer, the four adult healthcare day programs to J.G.B. REHABILITATION CORPORATION. Commencing on September 28, 2017 J.G.B. REHABILITATION CORPORATION undertook all the operations formerly carried out by J.G.B. HEALTH FACILITIES CORPORATION. J.G.B. HEALTH FACILITIES CORPORATION's sources of revenue had been payments from Medicaid and other third-party providers. When the operation of the programs were transferred, J.G.B. HEALTH FACILITIES CORPORATION no longer had revenue or assets and ceased to operate.
- E. The corporation shall carry out the plan of dissolution as expeditiously as possible.
 - F. A Certificate of Dissolution shall be executed, and all approvals required under N.Y. Not-for-Profit Corp. Law §1002 shall be obtained prior to filing the certificate of dissolution with the Department of State of the State of New York as required by law.
 - G. The approval of the dissolution of the corporation shall be obtained from governmental agencies or officers as follows: New York State Department of Health, the NYS Department of Taxation and local Departments of Finance, and the Office of the Attorney General of the State of New York

CERTIFICATION

State of New York)
) ss.:
County of New York)

I, Eric J. Maidenberg, Secretary of J.G.B. HEALTH FACILITIES COPORATION hereby certify that a special meeting of the Board of Directors of the Corporation was held at 5:15 PM on April 27, 2021 at 250 West 64th Street, New York, New York, at which a quorum was present and the within resolution was duly submitted and passed by a unanimous vote of the Directors.

Dated: May 14, 2021


Eric Maidenberg (May 14, 2021 14:36 EDT)
Eric J. Maidenberg
Secretary

**Resolution of the
Board of Directors of
J.G.B. Health Facilities Corporation**

WHEREAS, J.G.B. HEALTH FACILITIES CORPORATION was incorporated on November 14, 1974 as J.G.B. NURSING HOME CORPORATION and on September 18, 1979 changed its name to J.G.B. HEALTH FACILITIES CORPORATION and operated adult day healthcare programs in New York City, Buffalo, Albany and Niagara Falls until September 27, 2017. During 2017, J.G.B. REHABILITATION CORPORATION, another subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, requested and received approval from NYSDOH to take over operation of J.G.B. HEALTH FACILITIES CORPORATION's programs, and transfer, the four adult healthcare day programs to J.G.B. REHABILITATION CORPORATION. Commencing on September 28, 2017 J.G.B. REHABILITATION CORPORATION undertook all the operations formerly carried out by J.G.B. HEALTH FACILITIES CORPORATION. J.G.B. HEALTH FACILITIES CORPORATION's sources of revenue had been payments from Medicaid and other third-party providers. When the operation of the programs were transferred, J.G.B. HEALTH FACILITIES CORPORATION no longer had revenue or assets and ceased operation.

WHEREAS, the President and CEO of J.G.B. HEALTH FACILITIES CORPORATION has submitted a report recommending dissolution of this corporation because said corporation is no longer active and has no assets or liabilities, and

WHEREAS, a plan for the dissolution of J.G.B. HEALTH FACILITIES CORPORATION and for the distribution of its assets, annexed to this Resolution as **Exhibit A**, has been submitted to the Board of Directors at its April 27, 2021 meeting, and

WHEREAS the Secretary has previously notified the entire Board of Directors of J.G.B. HEALTH FACILITIES CORPORATION of the contemplated Dissolution and each of said Directors of J.G.B. HEALTH FACILITIES CORPORATION having either waived or/acknowledged receipt of due notice of said meeting, and

WHEREAS, the Board after due consideration of the report and plan has determined the validity thereof and in their unanimous opinion deemed it advisable to dissolve this corporation forthwith, and after its unanimous vote favoring adoption of the plan of dissolution of the Corporation, be it

RESOLVED, that the Board of Directors does hereby adopt said plan of dissolution and does recommend to the members, that in the best interests of all, this corporation be dissolved and its affairs wound up, and be it further

RESOLVED, that a special meeting of the sole corporate member of this corporation, the Jewish Guild for the Blind, be held at 250 W 64th Street, New York, New York on April 27, 2021, at such time as immediately follows this meeting, to vote on the question as to whether this corporation shall be dissolved and its assets distributed in accordance with the plan adopted by the Board of Directors, and that the Secretary has

previously notified the entire Board of Directors of the Jewish Guild for the Blind, the sole Corporate Member, of the contemplated Dissolution of J.G.B. HEALTH FACILITIES CORPORATION and each of said Directors of Jewish Guild for the Blind having either waive or/acknowledge receipt of due notice of said meeting, having been duly apprised of the purpose of said meeting.

**Resolution of the
Sole Corporate Member of
J.G.B. Health Facilities Corporation**

WHEREAS, J.G.B. HEALTH FACILITIES CORPORATION was incorporated on November 14, 1974 as J.G.B. NURSING HOME CORPORATION and on September 18, 1979 changed its name to J.G.B. HEALTH FACILITIES CORPORATION and operated adult day healthcare programs in New York City, Buffalo, Albany and Niagara Falls until September 27, 2017. During 2017, J.G.B. REHABILITATION CORPORATION, another subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, requested and received approval from NYSDOH to take over operation of J.G.B. HEALTH FACILITIES CORPORATION's programs, and transfer, the four adult healthcare day programs to J.G.B. REHABILITATION CORPORATION. Commencing on September 28, 2017 J.G.B. REHABILITATION CORPORATION undertook all the operations formerly carried out by J.G.B. HEALTH FACILITIES CORPORATION. J.G.B. HEALTH FACILITIES CORPORATION's sources of revenue had been payments from Medicaid and other third-party providers. When the operation of the programs were transferred, J.G.B. HEALTH FACILITIES CORPORATION no longer had revenue or assets and ceased operation.

WHEREAS, the Board of Directors has adopted a plan of dissolution and distribution of assets of J.G.B. HEALTH FACILITIES CORPORATION and has recommended that this corporation be dissolved accordingly and a special meeting of the members having been duly called to consider the matter, and

WHEREAS, after considering the report of the President and the plan as adopted by the Board of Directors for the dissolution of this corporation and the distribution of its assets, it appears that said corporation no longer conducts activities and has no assets of liabilities,

Now, THEREFORE, by at least two-thirds of the votes cast at this meeting of the sole corporate member, the affirmative votes cast in favor of the action being at least equal to the quorum, blank votes and abstentions not being counted in the number of votes cast, it is

RESOLVED, that the plan of dissolution and distribution of assets be and the same hereby is approved; that a copy of the plan be made a part of the minutes of this meeting; and that the board and officers are hereby directed and authorized to take all steps required by law and otherwise necessary and appropriate to carry out the plan and wind up the affairs of the corporation.

CERTIFICATION

State of New York)
) ss.:
County of New York)

I, Eric J. Maidenberg, Secretary of JEWISH GUILD FOR THE BLIND, the sole corporate member of J.G.B. HEALTH FACILITIES COPORATION hereby certify that a special meeting of the Board of Directors of the JEWISH GUILD FOR THE BLIND was held at 5:25 PM on April 27, 2021 at 250 West 64th Street, at which a quorum was present, and the within Plan of Dissolution was duly submitted and passed by a unanimous vote of the Directors.

Dated: May 14, 2021


Eric Maidenberg (May 14, 2021 14:36 EDT)
Eric Maidenberg
Secretary

BY-LAWS
OF
J.G.B. HEALTH FACILITIES CORPORATION

ARTICLE I

OFFICE

Section 1.01 Office. The principal offices of J.G.B. Health Facilities Corporation (the "Corporation") shall be located at 15 West 65th Street, New York, New York 10023 and 111 East 59th Street, New York, New York 10022. The Corporation may change the location of the offices or maintain additional offices at such other places as the board of directors of the Corporation (collectively, the "Board of Directors" or the "Board") may from time to time determine.

ARTICLE II

MEMBER

Section 2.01 Member. The Corporation shall have a single member, which is The Jewish Guild for the Blind (the "Member").

Section 2.02 Annual Meeting. An annual meeting of the Member to consider yearly Corporation reports and to consider such other matters as may be appropriate, shall be held in May of each year, at a date, place and time as is fixed by the Chair, or in his or her absence, the Vice-Chair.

Section 2.03 Annual Report of Directors. The Board shall present at each annual meeting of the Member a report in accordance with Section 519 of the Not-for-Profit Corporation Law (the "NPCL").

Section 2.04 Special Meetings of the Member. The Member may in accordance with the NPCL hold special meetings at such place, date and time and for such purpose or purposes as the Member may determine, and the Chair or the Board may in any event call a special meeting in accord with the provisions of the NPCL. Any action that the Member may or must take by vote may also be taken without a meeting on written consent of the Member. All written consents and accompanying resolutions shall be filed with the minutes of the proceedings of the Corporation which are maintained by the Secretary.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 Powers. The Board of Directors shall have general power to control and to manage the affairs and property of the Corporation in accordance with the purposes and limitations set forth in the Certificate of Incorporation, as may be amended from time to time, and as set forth in these By-Laws.

Section 3.02 Election and Term of Office. The sole members of the Board of Directors shall consist at all times of the following: All of the members of the Executive Committee of the Board of Directors of Lighthouse Guild International, Inc. ("Lighthouse Guild International") in office from time to time shall serve as *ex officio* Directors of the Corporation. In addition, the President of the Corporation, if such individual is not a member of such Executive Committee, shall serve as an *ex officio* Director of the Corporation.

Section 3.03 Meetings. There shall be an annual meeting and three (3) other quarterly, regular meetings of the Board of Directors at a place, date and time designated by the Chair. Special meetings of the Board of Directors may be called by the Chair, Vice-Chair, or the Chief Executive Officer and shall be held on the date and at the place designated by the person calling the meeting, except that the Chair may designate an alternate time that is within twenty-one (21) days of the requested date; in the event that the Chair designates an alternate date, the Chair will promptly so advise the person calling the meeting.

Section 3.04 Notice of Meetings. Notice of each meeting of the Board of Directors or any committee thereof shall be given personally or sent by mail, facsimile transmission, e-mail or other electronic means permitted by New York law to each Director, addressed to him or her at his or her address as it appears on the books and records of the Corporation, at least one (1) day before the day on which a Board or committee meeting is to be held. Such notice shall state the location, date and time of such meeting, and to the extent possible, the purpose or purposes for which the meeting is called. Notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to any Directors who were not present at the time of the adjournment. No notice of any meeting of the Board of Directors need be given to any Director who attends such meeting without protesting prior to or at the commencement of the meeting the lack of notice of such meeting, or to any Director who submits a signed waiver of notice whether before or after the meeting.

Section 3.05 Quorum and Voting. Unless a greater proportion is required by law, a majority of the total number of Directors entitled to vote if there were no vacancies (the "Entire Board") shall constitute a quorum for the transaction of business or of any specified item of business. Except as otherwise provided by law or by these By-Laws, the vote of a majority of the Entire Board shall be the act of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, the Directors present may adjourn the meeting until a quorum is obtained.

Section 3.06 Actions in Writing. Any action required or permitted under these By-Laws to be taken by the Board of Directors or by any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents shall be filed with the minutes of the proceedings of the Board of Directors or the committee, as applicable.

Section 3.07 Participation by Telephone. Any one or more Directors may participate in a meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV

OFFICERS

Section 4.01 Officers. The Officers of the Corporation shall be the Chair, the Vice-Chair, the Chief Executive Officer, the President, the Secretary, the Treasurer and such other Officers as shall be determined by the Chair with the ratification of the Board of Directors. With the exception of the Chair, the Vice-Chair, the Chief Executive Officer, the President and the Treasurer, Officers need not be Directors. One person may hold any two (2) or more of said Offices, except that the Offices of President and Chief Executive Officer cannot be held by the same person who holds the Office of Secretary.

Section 4.02 Election, Removal, Resignation, Vacancies. Except as specifically provided herein, the Officers shall be appointed by the Board of Directors for a term of one (1) year at the annual meeting of the Board of Directors. Each Officer so appointed shall hold such Office until the next annual meeting of the Board of Directors and until a successor shall have been appointed and ratified and shall qualify, or until his or her earlier death or resignation, or removal. Any Officer may resign his or her Office at any time. Any Officer may be removed at any time, with or without cause by the vote of the Board of Directors. A vacancy in any Office may be filled by the vote of the Board of Directors.

Section 4.03 Chair of the Board. The Chair shall be a member of the Board of Directors and shall preside at all meetings of the Board of Directors, shall have general charge and supervision of the affairs of the Corporation, shall be responsible for stimulating public understanding and support for the programs of the Corporation and its affiliates, shall assist in enlisting leadership for the Corporation, shall call meetings in accordance with these By-Laws and shall perform such other duties as may be assigned from time to time by the Board of Directors or the Member. James M. Dubin shall serve as the initial Chair for a term expiring on January 1, 2022. Prior to January 1, 2022, if the Office of the Chair becomes vacant by resignation or for any other reason, the Member shall appoint a successor to complete the then current term expiring on January 1, 2022, but such action may only be taken by the Member upon the majority vote of the individuals who are identified in the bylaws of Lighthouse Guild International as Guild Appointee Members.

Section 4.04 Vice-Chair of the Board. The Vice-Chair shall be a member of the Board of Directors and in the absence of the Chair, the Vice-Chair shall preside at all meetings of the Board of Directors. The Vice-Chair shall perform such other duties as may be assigned from time to time by the Chair or the Member. If the Chair is unable to perform his or her duties or is removed for any reason, the Vice-Chair shall succeed the Chair until a new Chair is elected. Joseph A. Ripp shall serve as the initial Vice-Chair for a term expiring on January 1, 2022. Prior to January 1, 2022, if the Office of the Vice-Chair becomes vacant by resignation or for any other reason, the Member shall appoint a successor to complete the then current term expiring on January 1, 2022, but such action may only be taken by the Member upon the majority vote of the individuals who are identified in the bylaws of Lighthouse Guild International as Lighthouse Appointee Members.

Section 4.05 Chief Executive Officer. The Chief Executive Officer shall exercise general supervision of the management of the affairs of the Corporation, subject, however, to the control of the Chair and the Board of Directors. The Chief Executive Officer shall from time to time make such reports concerning the affairs and operations of the Corporation as the Board of Directors may direct. The Chief Executive Officer shall have such other powers and perform such other duties as from time to time may be assigned to him or her by the Chair or the Board of Directors by contract or otherwise. Alan R. Morse shall serve as the initial Chief Executive Officer.

Section 4.06 President. The President shall report to the Chief Executive Officer, shall serve as Chief Executive Officer in the Chief Executive Officer's absence and shall perform such of the Chief Executive Officer's duties and such other duties as from time to time may be assigned to him or her by the Chief Executive Officer by contract or otherwise. Mark G. Ackermann shall serve as the initial President.

Section 4.07 Secretary and Assistant Secretaries. The Secretary and any Assistant Secretary shall keep the minute books and seal of the Corporation, and shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President by contract or otherwise.

Section 4.08 Treasurer and Assistant Treasurers. The Treasurer and any Assistant Treasurer shall perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President by contract or otherwise.

ARTICLE V

COMMITTEES

Section 5.01 Standing Committees. The standing committees of the Board shall be the Audit and Compliance Committee and such other standing committees as may be created by the Board.

Section 5.02 Audit and Compliance Committee. The Audit and Compliance Committee shall review and approve the annual audited financial statements of the Corporation and present such annual audited financial statements to the Board of Directors (such statements may be on a consolidated basis with affiliates of the Corporation) and shall oversee the compliance by the Corporation with applicable Federal, State and local laws and regulations, particularly those applicable to government supported services provided by the Corporation. The Chair, Vice-Chair and Treasurer shall be voting *ex officio* members of the Audit and Compliance Committee. The Chief Executive Officer and the President shall be non-voting *ex officio* members of the Audit and Compliance Committee.

Section 5.03 Special Committees. The Chair, with the ratification of the Board of Directors, may create and appoint the members of such special committees as may be deemed desirable. Special committees shall only have the powers specifically delegated to them by the Chair. Each such committee shall serve at the pleasure of the Board.

Section 5.04 Removal. Except with respect to *ex officio* members, any committee member may be removed at any time, with or without cause, by the Board.

Section 5.05 Vacancies. Except with respect to *ex officio* members, if any vacancy shall occur in any committee for any reason, including an increase in the number of members of such committee, the vacancy may be filled by the Board.

Section 5.06 Quorum, Vote. At all meetings of any committee, the presence in person of members constituting a majority of the membership of the entire committee shall be necessary and sufficient to constitute a quorum, and except as otherwise provided by law or by these By-Laws, the act of a majority of the members present at a meeting where a quorum is present shall be the act of the committee.

Section 5.07 Minutes. Each committee shall keep minutes of its proceedings to be filed in the minute books of the Corporation and shall report thereon to the Board of Directors at the request of the Board of Directors.

ARTICLE VI

RELATED PARTY TRANSACTIONS

Section 6.01 Related Party Contracts or Transactions. No contract or other transaction between the Corporation and one or more of its Directors or Officers, or between the Corporation and any other corporation, firm, association or other entity in which one or more of its Directors

or Officers are directors, officers or employees, or have a substantial financial interest is permitted other than a contract or other transaction with an entity that is an affiliate of the Corporation. Notwithstanding the foregoing, the Board may authorize such contract or transaction if the involved Director, Officer or employee fully discloses in good faith all material facts as to such Director's, Officer's or employee's interest in such contract or transaction and as to any such common directorship, officership or financial interest, or such facts are known to the Board, and if the Board authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of any interested Director.

Section 6.02 When Avoidable. If there was no such good faith disclosure to, or knowledge of, the Board, as set forth above, or if the vote of such interested Director was necessary for the authorization of such contract or transaction, the Corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the Corporation at the time it was authorized by the Board.

Section 6.03 Quorum. Common or interested Directors may be counted only for the purposes of determining the presence of a quorum at a meeting of the Board which authorizes such contract or transaction.

ARTICLE VII

INDEMNIFICATION

Section 7.01 Indemnification. The Corporation shall indemnify each Member and former Member, each Director and former Director, each of its Officers and former Officers, and such of its employees and agents (if any) as have been designated for indemnification by the Board in its discretion, and each person serving at the request of the Corporation as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (each, an "Indemnitee"), who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Indemnitee was or is a person as described herein, whether by or in the right of the Corporation or not, in a manner and to the fullest extent now or hereafter permitted by law. Indemnitees shall be indemnified (a) against all expenses (including, without limitation, attorneys' and other experts' fees and disbursements), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any actual or threatened action, suit or other proceeding, whether civil, criminal, administrative, investigative or an arbitration, or in connection with any appeal therein, or otherwise, and (b) against all expenses (including, without limitation, attorneys' and other experts' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of any action, suit or other proceeding by or in the right of the Corporation or in connection with any appeal therein, or otherwise; and no provision of these By-Laws is intended to be construed as limiting, prohibiting, denying or abrogating any of the general or specific powers or rights conferred under the Not-for-Profit Corporation Law upon the Corporation to furnish, or upon any court to award, such indemnification, or such other indemnification as may otherwise be authorized pursuant to the Not-for-Profit Corporation Law or any other law now or hereafter in effect, including, without limitation, indemnification of any employees or agents of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

Section 7.02 Advances of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding in the specific case upon receipt of an undertaking by or on behalf of the Member, the member of the Board or an Officer, employee or agent of the Corporation to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation as authorized by the Not-for-Profit Corporation Law, and then, only to the extent such advances do not exceed the indemnification to which such person is entitled.

Section 7.03 Determinations. If and to the extent such indemnification shall require a determination whether the relevant person met the applicable standard of conduct set forth in the Not-for-Profit Corporation Law, such determination shall be made expeditiously at the cost of the Corporation after a request for the same from the person seeking indemnification. If indemnification is to be given or an advance of expenses is to be made upon a determination by independent legal counsel, such counsel may be the regular counsel to the Corporation. In rendering such opinion, such counsel shall be entitled to rely upon statements of fact furnished to

them by persons reasonably believed by them to be credible, and such counsel shall have no liability or responsibility for the accuracy of the facts so relied upon, nor shall such counsel have any liability for the exercise of their own judgment as to matters of fact or law forming a part of the process of providing such opinion. The fees and disbursements of counsel engaged to render such opinion shall be paid by the Corporation whether or not such counsel ultimately are able to render the opinion that is the subject of their engagement.

Section 7.04 Insurance. Subject to the New York Not-for-Profit Corporation Law, the Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a Member, a member of the Board or an Officer, employee or agent of the Corporation against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of these By-Laws or otherwise.

Section 7.05 Applicability and Non Exclusivity. The right of indemnification herein provided for shall be in addition to any and all rights to which any Indemnitee otherwise might be entitled, and the provisions hereof shall neither impair nor adversely affect such rights.

Section 7.06 Limitation. No amendment, modification or rescission of this Article VII shall be effective to limit any person's right to indemnification with respect to any alleged cause of action that accrues or other incident or matter that occurs prior to the date on which such modification, amendment or rescission is adopted.

ARTICLE VIII

AMENDMENTS

Section 8.01 Members. Subject to any limitations set forth in these By-Laws, the Certificate of Incorporation and applicable law, any By-Law may be adopted, amended, modified, restated or repealed only by the Member. Notwithstanding the foregoing, any amendment to the By-Laws that would diminish the protections for Lighthouse International contained in these By-Laws prior to January 1, 2022 shall not be authorized by the Member without the affirmative vote of seven (7) individuals on the board of directors of the Member, and further provided that one of such seven (7) individuals is a person who is an Independent Lighthouse Appointee as such term is defined in the bylaws of Lighthouse Guild International.

Section 8.02 Notice of Meeting to Amend. Notice of any such meeting to adopt, amend, modify, restate or repeal any By-Law shall set forth the nature of the changes proposed to be made to these By-Laws.

Adopted by the Member



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12208

PUBLIC HEALTH COUNCIL

September 5, 1974

A 193951

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after due inquiry and investigation at a meeting of the Public Health Council held on the 30th day of August, 1974, I hereby certify that the Certificate of Incorporation of J.G.B. Nursing Home Corporation is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS

Secretary

Sent to: Morton Pepper, Esq.
Pepper and Pepper
55 Liberty Street
New York, New York 10005

J.G.B. Nursing Home Corporation
15 West 65th Street
New York, New York 10023

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GEORGE BAEHR, M.D.
BLONEVA P. BOND
DETLEV BRONK, Ph. D.
GORDON E. BROWN

MORTON P. HYMAN
CHARLES T. LANIGAN
GERALD B. MANLEY, M.D.
GEORGE R. METCALF
JAMES F.X. O'ROURKE, M.D.
W. KENNETH RILAND, D.O.

JOHN F. ROACH, M.D.
HOWARD A. RUSK, M.D.
JOHN M. WALSH

HOLLIS S. INGRAHAM, M.D.
EX OFFICIO

CERTIFICATE OF INCORPORATION

of

J.G.B. NURSING HOME CORPORATION

Under Section 402 of the Not-For-Profit
Corporation Law and the Public Health Law

We, the undersigned, for the purpose of forming
a Nursing Home Corporation pursuant to the Not-For-Profit
Corporation Law and the Public Health Law of the State of
New York hereby certify:

I

The name of the proposed Corporation is J.G.B.
NURSING HOME CORPORATION (hereinafter referred to as the
"Corporation").

II

The Corporation is not formed for pecuniary
profit or financial gain.

All income and earnings of the Corporation shall
be used exclusively for its corporate purposes.

The Corporation is a corporation as defined in
subparagraph (A)(5) of Section 102 (Definitions) of the
Not-For-Profit Corporation Law.

III

The purpose for which the Corporation is formed
is to plan, construct, erect, build, acquire, alter, re-
construct, rehabilitate, own, maintain and operate a

nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be "Type D".

IV

The territory in which the operations of the Corporation will be principally conducted is the State of New York.

V

The principal office of the Corporation is to be located in the City of New York, County of New York, and State of New York.

VI

The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation.

VII

The names and residences of the initial Directors are:

Name

Address

John Mosler

250 Park Avenue
New York, N.Y. 10017

Jerry I. Speyer

Tishman Realty & Construction
666 Fifth Avenue
New York, N.Y. 10019

Roger J. King

Lincoln Avenue
Port Chester, N.Y. 10573

Morton Pepper

55 Liberty Street
New York, N.Y. 10005

VIII

The duration of the Corporation shall be two years from the date of the filing of this Certificate by the Secretary of State.

IX

The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law.

X

The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XI

The Corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay dividends,

43.

and shall be operated exclusively for the purposes enumerated in Articles II and III hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Corporation shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Corporation the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes, as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provisions of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a

54.

local government within the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of the Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.

XII

All of the incorporators of this corporation are natural persons over the age of 19 years.

XIII

All the consents and approvals required are endorsed upon and annexed hereto.

The following consents and approvals are annexed hereto.

1. The consent of the Commissioner of Health to the filing of this Certificate of Incorporation with the Secretary of State.

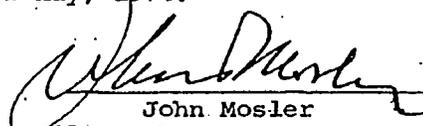
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... of the ...

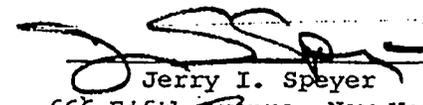
- 2. The approval of a Justice of the Supreme Court, who serves in the district wherein the Corporation is to have an office, to the formation of this Corporation.
- 3. The approval of the Public Health Council.

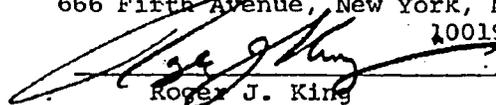
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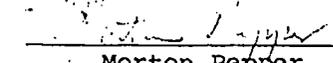
The post office address to which the Secretary of State shall mail a copy of any notice required by law is: 15 West 65th Street, New York, N.Y. 10023.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this /^{SI} day of May, 1974.


 John Mosler
 250 Park Avenue, New York, N.Y.
 10017

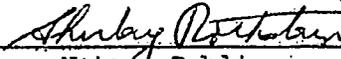

 Jerry I. Speyer
 666 Fifth Avenue, New York, N.Y.
 10019


 Roger J. King
 Lincoln Avenue, Port Chester, N.Y.
 10573


 Morton Pepper
 55 Liberty Street, New York, N.Y.
 10005

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

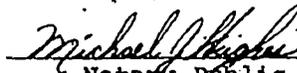
On this 6th day of May, 1974, before me personally came JOHN MOSLER, to me known and known to me to be one of the persons described in and who executed the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and he duly acknowledged to me that he executed the same.


Notary Public

SHIRLEY ROTHSTEIN
NOTARY PUBLIC, State of New York
No. 03-86B1065 Qual. In Bronx Co.
Cert. filed in New York County
Commission Expires March 30, 1976

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

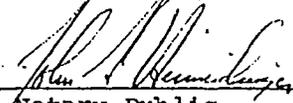
On this 3rd day of May, 1974, before me personally came JERRY I. SPEYER, to me known and known to me to be one of the persons described in and who executed the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and he duly acknowledged to me that he executed the same.


Notary Public

MICHAEL J. HUGHES
NOTARY PUBLIC, STATE OF NEW YORK
No. 1890273
Qualified in Kings County
Term Expires March 30, 1975

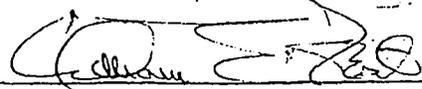
STATE OF NEW YORK)
COUNTY OF) ss.:

On this 6th day of May, 1974, before me personally came ROGER J. KING, to me known and known to me to be one of the persons described in and who executed the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and he duly acknowledged to me that he executed the same.


Notary Public

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 1st day of May, 1974, before me personally came MORTON PEPPER, to me known and known to me to be one of the persons described in and who executed the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and he duly acknowledged to me that he executed the same.


Notary Public

WILLIAM E. FROST
Notary Public - State of New York
No. 31-6124100 - Queens County
Commission Expires March 30, 1976

CONSENT TO INCORPORATION
BY COMMISSIONER OF HEALTH

I, Hollis S. Ingraham, M.D., Commissioner of Health of the State of New York, do this 30th day of August, 1974, pursuant to Article 28-A of the Public Health Law hereby certify that I consent to the filing of the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, with the Secretary of State of the State of New York.

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

HOLLIS S. INGRAHAM, M.D.
COMMISSIONER OF HEALTH

By Donald Dickerson
DEPUTY COMMISSIONER

Dated: 10/1/74

Lou J. Berkowitz
Attorney General

By Barbara J. Rave
Assistant Attorney General

~~Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)~~

~~Dated: _____~~

~~Lou J. Berkowitz
Attorney General~~

~~By _____
Assistant Attorney General~~

27

The undersigned, a Justice of the Supreme Court of the State of New York, First Judicial District, wherein is located the principal office of J.G.B. NURSING HOME CORPORATION, hereby approves the within Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and the filing hereof.

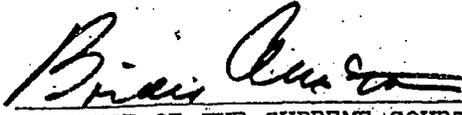
Dated: NOV 6 - 1974 1974.


JUSTICE OF THE SUPREME COURT
BIRDIE AMSTERDAM

110

The undersigned, a Justice of the Supreme Court of the State of New York, First Judicial District, wherein is located the principal office of J.G.B. NURSING HOME CORPORATION, hereby approves the within Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and the filing hereof.

Dated: NOV 6 - 1974 1974.


JUSTICE OF THE SUPREME COURT
BIRDIE AMSTERDAM

10

193951-11

CERTIFICATE OF INCORPORATION

of

J.G.B. NURSING HOME CORPORATION

Under Section 402 of the Not-For-Profit Corporation Law and the Public Health Law.

Dated: May 1, 1974

PEPPER & PEPPER
ATTORNEYS AT LAW
55 LIBERTY STREET
NEW YORK, N. Y. 10005
WO 4-0285

done
1/2 v.

type D

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED NOV 14 1974
TAX \$ *none*
FILING FEE \$ *50*
John J. [unclear]

31 ny
type D
2 yr duration

11

A349028

**CERTIFICATE OF AMENDMENT
of
CERTIFICATE OF INCORPORATION
of**

J.G.B. NURSING HOME CORPORATION

**Under Section 803 of the
Not-For-Profit Corporation Law.**

We, the undersigned, being the President and Secretary
of J.G.B. NURSING HOME CORPORATION, do certify and state:

1. The name of the Corporation is J.G.B. NURSING HOME
CORPORATION.

2. The Certificate of Incorporation was filed by the
Department of State on the 14th day of November, 1974. The
Corporation was formed under the Not-For-Profit Corporation Law
and the Public Health Law.

3. The Corporation is a corporation as defined in
subparagraph (A)(5) of Section 102. The corporation is a Type
D corporation under Section 201, and it will be a Type B corpo-
ration after the amendments stated herein.

4. The post office address to which the Secretary of
State shall mail a copy of any notice required by law is

15 West 65th Street
New York, N. Y. 10023.

5. The amendments effected are:

(a) The heading of the certificate of incorporation now reads as follows:

"CERTIFICATE OF INCORPORATION
of
J.G.B. NURSING HOME CORPORATION

Under Section 402 of the Not-
For-Profit Corporation Law and
the Public Health Law"

The heading which is to be substituted
reads as follows:

"CERTIFICATE OF INCORPORATION
of
J.G.B. NURSING HOME CORPORATION

Under Section 402 of the Not-
For-Profit Corporation Law"

(b) The opening paragraph of the certificate of
incorporation now reads as follows:

"We, the undersigned, for the purpose of
forming a Nursing Home corporation pursuant
to the Not-For-Profit Corporation Law and
the Public Health Law of the State of New
York hereby certify:"

The opening paragraph of the certificate of
incorporation which is to be substituted reads as follows:

"We, the undersigned, for the purpose of
forming a Nursing Home Corporation pursuant
to the Not-For-Profit Corporation Law of the
State of New York hereby certify:"

(c) Article III of the Certificate of Incorporation now reads as follows:

"The purpose for which the Corporation is formed is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be 'Type D'."

Article III of the Certificate of Incorporation which is to be substituted reads as follows:

"The purpose for which the Corporation is formed is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be 'Type B'."

(d) Article VI of the Certificate of Incorporation now reads as follows:

"The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the 'Commissioner'). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation."

Article VI of the Certificate of Incorporation which is to be substituted reads as follows:

"The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation."

(e) Article VIII of the Certificate of Incorporation now reads as follows:

"The duration of the Corporation shall be two years from the date of the filing of this Certificate by the Secretary of State."

Article VIII of the Certificate of Incorporation which is to be substituted reads as follows:

"The duration of the Corporation shall be perpetual."

(f) Article IX of the Certificate of Incorporation now reads as follows:

"The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law."

Article IX of the Certificate of Incorporation which is to be substituted reads as follows:

"The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Not-For-Profit Corporation Law."

(g) Article X of the Certificate of Incorporation now reads as follows:

"The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law."

Article X of the Certificate of Incorporation is to be deleted.

(h) Articles XI, XII, XIII and XIV of the Certificate of Incorporation are renumbered Articles X, XI, XII and XIII respectively.

6. The amendment of the Certificate of Incorporation ^{majority} was authorized by ^{at a meeting held on Dec. 15, 1975.} vote of the members entitled to vote thereon.

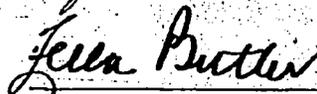
7. The consent of the Commissioner of Health and the approval of the Public Health Council and of a Justice of the Supreme Court of the State of New York were annexed to the Certificate of Incorporation. Before this Certificate of Amendment is delivered to the Department of State, the approval of the Public Health Council and of a Justice of the Supreme Court of the State of New York, First Judicial Department and the consent of the Commissioner of Health, will be endorsed upon or annexed to the Certificate of Amendment.

8. The office of the Corporation is located in
New York County.

IN WITNESS WHEREOF we have made, subscribed and
verified this Certificate this 15th day of December, 1975.



President
IRVING G. KAUFMANN



Secretary
ZELLA BUTLER

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

IRVING G. KAUFMANN being duly sworn, deposes and says that he is the President of J.G.B. NURSING HOME CORPORATION; that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION and knows the contents thereof; and that the same is true to his own knowledge.

Sworn to before me this
15 day of December, 1975

John F. Heimerdinger
Notary Public

JOHN F. HEIMERDINGER
Notary Public, State of New York
No. 60-1741190 Westchester County
Certificate filed in New York Co.
Term Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ZELLA BUTLER being duly sworn, deposes and says that he is the Secretary of J.G.B. NURSING HOME CORPORATION; that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION and knows the contents thereof; and that the same is true to his own knowledge.

Sworn to before me this
15 day of December, 1975

John F. Heimerdinger
Notary Public

JOHN F. HEIMERDINGER
Notary Public, State of New York
No. 60-1741190 Westchester County
Certificate filed in New York Co.
Term Expires March 30, 1977

The undersigned, a Justice of the Supreme Court of the State of New York, First Judicial District, wherein is located the principal office of J.G.B. NURSING HOME CORPORATION, hereby approves the within Certificate of Amendment of the Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and the filing hereof.

Dated: NEW YORK, N.Y.

AUG 25 1976

Alfred M. Ascione
Justice of the Supreme Court
ALFRED M. ASCIONE

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated: August 24 1976
LOUIS J. LEFKOWITZ
Attorney General

By Grace Cole
Assistant Attorney General
ascione

I, Robert P. Whalen, M.D., Commissioner of Health of the State of New York, do this 27th day of July, 1976, pursuant to Section 804 (a) of the Not-for-Profit Corporation Law hereby certify that I consent to the filing of the foregoing Certificate of Amendment of the Certificate of Incorporation of J.C.B. Nursing Home Corporation with the Secretary of State of the State of New York.

ROBERT P. WHALEN, M.D.
Commissioner

BY:

Edward D. Coates
EDWARD D. COATES, M.D.
Deputy Commissioner

m)

9



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

July 26, 1976

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 23rd day of July, 1976, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of J.G.B. Nursing Home Corporation is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS
Secretary

Sent to: Morton Pepper, Esq.
Pepper and Pepper
55 Liberty Street
New York, New York 10005

cc: J.G.B. Nursing Home Corporation
15 West 65th Street
New York, New York 10023

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN

BLONIEVA P. BOND

GORDON E. BROWN
Joseph R. Fontanetta, M.D.
William Lee Frost

MORTON P. HYMAN

GEORGE METCALF
JAMES F. X. O'ROURKE, M.D.
W. KENNETH RILAND, D.O.
JOHN F. ROACH, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH

COMMISSIONER OF HEALTH
ROBERT P. WHALEN, M.D.
EX OFFICIO

-10

11
A349028

CERTIFICATE OF AMENDMENT
of
CERTIFICATE OF INCORPORATION
of

J.G.B. NURSING HOME
CORPORATION

Under Section 803 of the
Not-For-Profit Corporation
Law.

Dated: December , 1975

STATE OF NEW YORK
DEPARTMENT OF STATE

TAX \$ none

PAID BY \$ 30

PAID OCT 15 1976

Frank Milano
Secretary of State

me

31 n.y.

J
PEPPER & PEPPER
ATTORNEYS AT LAW
55 LIBERTY STREET
NEW YORK, N. Y. 10005
WO 4-0285

11
AUG 5 - 1976

usc

usc

RESTATED CERTIFICATE OF INCORPORATION

of

J.G.B. NURSING HOME CORPORATION

Under Section 805 of the Not-for-Profit Corporation Law

A607069

The undersigned, BERNARD H. MENDICK and MRS. JACK E. BUTLER, being the President and the Secretary, respectively, of the J.G.B. NURSING HOME CORPORATION, hereby certify that:

1. The name of the Corporation is J.G.B. NURSING HOME CORPORATION.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on November 14, 1974 and the Corporation is currently a Type B Corporation. The Public Health Council, the Commission of Health and a Justice of the Supreme Court, First Judicial Department, approved, and the Attorney General waived notice of, the filing of the Certificate of Incorporation.

3. The Certificate of Incorporation of the Corporation is hereby amended to effect the following changes authorized by the, Not-for-Profit Corporation Law:

A. To change the name of the Corporation from J.G.B. NURSING HOME CORPORATION to J.G.B. HEALTH FACILITIES CORPORATION.

B. To restate Article II of the Certificate of Incorporation.

C. To amend Article III of the Certificate of Incorporation to amend and restate the corporate purposes of the Corporation.

D. To amend the provisions of Article IV of the Certificate of Incorporation respecting the territory in which the operations of the Corporation will be principally conducted and renumber it as Article VII thereof.

E. To renumber Article V of the Certificate of Incorporation as Article IV thereof.

F. To renumber Article VI of the Certificate of Incorporation as Article VIII thereof.

G. To strike out, as surplusage, the provisions respecting the original directors of the Corporation now set forth in Article VII of the Certificate of Incorporation.

H. To renumber Article VIII of the Certificate of Incorporation as Article IX thereof.

I. To strike out Article IX of the Certificate

of Incorporation relating to the sale, transfer, encumbrance or assignment of real property.

J. To amend the provisions set forth in Article X of the Certificate of Incorporation respecting compensation, liquidation and distribution of assets and to set forth the substance thereof in Article II and new Articles V and XIII of the Certificate of Incorporation.

K. To strike out, as surplusage, the provision respecting the ages of the incorporators now set forth in Article XI of the Certificate of Incorporation.

L. To amend Article XII of the Certificate of Incorporation respecting required consents and approvals.

M. To renumber Article XIII of the Certificate of Incorporation as Article X thereof.

N. To add a new Article VI of the Certificate of Incorporation prohibiting certain propaganda and lobbying activities.

O. To add a new Article XI of the Certificate of Incorporation permitting the Board of Directors of the Corporation or any committee thereof to execute a written consent in lieu of a meeting.

4. To accomplish the foregoing, the Certificate of Incorporation, as hereby amended and changed, is hereby restated to read as follows:

"CERTIFICATE OF INCORPORATION

of

J.G.B. HEALTH FACILITIES CORPORATION

Under Section 402 of the Not-for-Profit
Corporation Law

I. The name of the Corporation is J.G.B. HEALTH FACILITIES CORPORATION.

II. The Corporation described herein is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The Corporation shall not be conducted or operated for profit and no part of the net earnings of the Corporation shall inure to the benefit of any member or individual, nor shall any of the profits or assets of the Corporation be used other than for the purposes of the Corporation.

III. A. The purposes of the Corporation are:

(i) To improve the physical and mental condition of adult blind persons; to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a home for adult blind persons consisting of a skilled nursing facility

for those adult blind persons who require the services of licensed professional nurses and a health related facility for those adult blind residents who are unable to live in the community and need an institutional environment; apartment housing for those adult blind persons who can no longer live in the community but do not require services of nurses or an institutional environment; and housing for staff members of these facilities.

(ii) To obtain and utilize technical and other resources to assist the Corporation in the achievement of its purposes.

(iii) To promote and assist in coordinating other organizations and agencies, either public or private, to better serve the members of the Corporation and the community.

(iv) To render financial assistance to any corporation, community chest, fund, foundation, agency or institution which is organized and operated exclusively for, and devoted to the realization of, charitable, scientific, religious, literary, artistic or educational purposes and is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of

1954, as amended (hereinafter referred to as the "Code").

(v) To solicit, accept and receive, by gift, bequest, devise or benefit of trust; and to hold, own and administer, any property, real, personal, tangible or intangible, wherever located.

(vi) In furtherance of the purposes of the Corporation, to be a member, associate or manager of other non-profit activities, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

(vii) In furtherance of the purposes of the Corporation, to purchase, lease, or otherwise acquire, to hold, and to mortgage, sell or otherwise dispose of or encumber, real and personal property or any share or interest therein, and to invest, reinvest and deal with the same.

(viii) To borrow money, to make, accept, endorse, execute and issue promissory notes and other obligations for money borrowed, property acquired or services received.

(ix) To make and perform contracts and incur liabilities.

(x) In furtherance of the purposes of the Corporation, to become a member of any committee or other organization.

(xi) To receive and maintain a fund or funds, to have, hold, control, manage, sell and exchange the same, to change the investment thereof, to invest and reinvest the same and the income therefrom, and to apply the income therefrom and the principal thereof to any of the purposes of the Corporation.

(xii) To do all the things permitted by Section 202 of the Not-for-Profit Corporation Law necessary and useful to fulfill and promote its purposes; provided, however, that, notwithstanding any provision of this Certificate of Incorporation or the By-Laws of the Corporation, the Corporation shall not carry on any activities which are not permitted to be carried on by an organization described in Section 501(c)(3) of the Code.

B. Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(b)-(n) and (p)-(s) of the Not-for-Profit Corporation Law.

C. The Corporation shall be considered a Type B Corporation as that term is defined in Section 201 of the Not-for-Profit Corporation Law.

IV. The principal office of the Corporation is to be located in the City of New York, County of New York and State of New York.

V. In the event of liquidation, dissolution or winding up of the Corporation, whether voluntary, involuntary or by operation of law, the property or other assets of the Corporation remaining after the payment, satisfaction and discharge of liabilities or obligations, shall be distributed entirely to or among one or more organizations which shall have received notice that it is or they are an organization or organizations exempt from taxation under Section 170(b)(1)(A) of the Code (other than clauses (vii) and (viii) thereof) and described in Section 501(c)(3) of the Code (each of which has been in existence and so-described for a continuous period of at least sixty (60) calendar months preceding such distribution) subject to the order of the Supreme Court as and when provided by law. No member of the Corporation or other individual shall have any right, title or interest in or to any of the remaining assets of the Corporation.

VI. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in, any political campaign on behalf of any candidate for public office.

VII. The territory in which the operations of the Corporation are principally to be conducted is the United States of America.

VIII. The number of directors of the Corporation shall be not less than three (3) nor more than fifteen (15). Directors shall be elected by the members of the Corporation.

IX. The duration of the Corporation shall be perpetual.

X. The post office address to which the Secretary of State shall mail any notices required by law is:

15 West 65th Street
New York, New York 10023

XI. Any action required or permitted to be taken by the Board of Directors of the Corporation or any committee thereof may be taken without a meeting if all members of the Board of Directors or any such committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board of Directors or any such committee shall be filed with the minutes of the proceedings of the Board of Directors or such committee.

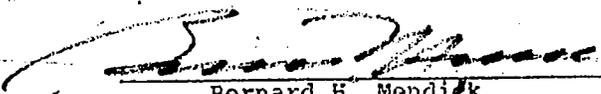
XII. Prior to the delivery to the Department of State for filing, all necessary consents required by law will be

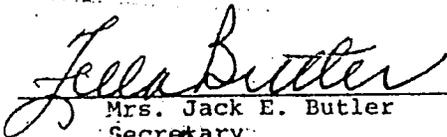
endorsed upon or annexed to this Certificate.

XIII. The Corporation may pay to any director, officer or any other person only reasonable compensation for services actually rendered to it in furtherance of the Corporation's charitable purposes and only upon the approval of the Board of Directors of the Corporation or any appropriate committee thereof."

5. This Restated Certificate of Incorporation of the Corporation was authorized by the affirmative vote of a majority of the members of J.G.B. NURSING HOME CORPORATION, entitled to vote thereon in person or by proxy at a meeting duly called and held for that purpose at which a quorum was present and acting throughout, at 15 West 65th Street, New York, New York, on August 23, 1978.

IN WITNESS WHEREOF, we have made and signed this Restated Certificate of Incorporation this 18th day of September, 1978, and affirm that the statements made herein are true under the penalties of perjury.


Bernard H. Mendick
President


Mrs. Jack E. Butler
Secretary

CERTIFICATE OF APPROVAL

XAVIER C. RICCOBONO

I, the undersigned, a Justice of the Supreme Court of the State of New York in the First Judicial District in which the principal office of J. G. B. NURSING HOME CORPORATION is to be located, do hereby approve of the foregoing *RESTATED* Certificate of Incorporation of J. G. B. NURSING HOME CORPORATION and the filing thereof.

New York, New York

JUL 25 1979

Xavier C. Riccobono
Justice of the Supreme
Court of the State of New York

XAVIER C. RICCOBONO

The undersigned has no objection to the foregoing Certificate.

**THE UNDERSIGNED HAS NO
OBJECTION TO THE GRANTING
OF JUDICIAL APPROVAL
HEREON AND WAIVES
STATUTORY NOTICE**

Attorney General of the State of
New York

7/15/79
ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

By: *Richard J. Rosenthal*
Assistant Attorney General
of the State of New York

**RICHARD J. ROSENTHAL
ASSISTANT ATTORNEY GENERAL**



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 25th day of May, 1979, I hereby certify that the Restated Certificate of Incorporation of J.G.B. Nursing Home Corporation is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams
MARIANNE K. ADAMS
Secretary

Sent to: Mr. Richard H. Gilden
Rosenman, Collin, Freund,
Lewis and Cohen
Attorneys at Law
757 Madison Avenue
New York, New York 10022

cc: J.G.B. Nursing Home Corporation
15 West 65th Street
New York, New York 10023

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GORDON E. BROWN
ROBERT J. COLLINS, M.D.
THOMAS P. DOWLING
MSGR. CHARLES J. FAHEY

JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST
MORTON P. HYMAN
JEANNE C. JONAS
MARY C. MC LAUGHLIN, M.D.
ROBERT H. RANDLES, M.D.

HOWARD A. BUSK, M.D.
JOHN M. WALSH
KENNETH W. ADDOWARD, M.D.
COMMISSIONER OF HEALTH
DAVID AXELROD, M.D.

USC

RUSH

USC

RESTATED CERTIFICATE OF INCORPORATION

of

J.G.B. NURSING HOME CORPORATION

Under Section 805 of the Not-for-Profit Corporation Law

6907069

11/3/51-11

ADD 15065

STATE OF NEW YORK
DEPARTMENT OF STATE

SEP 18 1979

AMT OF CHECK \$	39
FILING FEE \$	30
TAX \$	
COPY \$	9
CERT \$	
REFUND \$	

EX:

ny
TYPE B

new number
8/31/79
A 602970
19/18

408018

ROSENMAN COLIN FREUND LEWIS & COHEN

575 MADISON AVENUE, NEW YORK, N.Y. 10022

(212) 644-7000

CERTIFICATE OF AMENDMENT

of

CERTIFICATE OF INCORPORATION

of

J.G.B. HEALTH FACILITIES CORPORATION

Under Section 803 of the Not-for-Profit
Corporation Law

4883219
The undersigned, Robert H. Haines and Diane Levine
being the President and the Assistant Secretary, respectively, of the
J.G.B. HEALTH FACILITIES CORPORATION, hereby certify that:

1. The name of the Corporation is J.G.B. HEALTH
FACILITIES CORPORATION.

2. The Certificate of Incorporation of the Corporation
was filed by the Department of State on November 14, 1974
under the Not-for-Profit Corporation Law and the Public Health
Law. A Certificate of Amendment of the Certificate of
Incorporation was filed on October 15, 1976 under the Not-
for-Profit Corporation Law. A Restated Certificate of
Incorporation was filed on September 18, 1979 under the Not-
for-Profit Corporation Law.

3. The corporation is a corporation as defined in sub-
paragraph (a) (5) of section 102 of the Not-for-Profit
Corporation Law. The Corporation is a Type B corporation
under section 201 and will be a Type B corporation after the
amendment stated herein.

4. The post office address to which the Secretary of State shall mail any notices required by law is:

15 West 65th Street
New York, New York 10023

5. The amendment effected is:

(a) Article III of the Certificate of Incorporation now reads as follows:

"A. The purposes of the Corporation are:

(i) To improve the physical and mental condition of adult blind persons; to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a home for adult blind persons consisting of a skilled nursing facility for those adult blind persons who require the services of licensed professional nurses and a health related facility for those adult blind residents who are unable to live in the community and need an institutional environment; apartment housing for those adult blind persons who can no longer live in the community but do not require services of nurses or an institutional environment; and housing for staff members of these facilities.

(ii) To obtain and utilize technical and other resources to assist the Corporation in the achievement of its purposes.

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(iii) To promote and assist in coordinating other organizations and agencies, either public or private, to better serve the members of the Corporation and the community.

(iv) To render financial assistance to any corporation, community chest, fund, foundation, agency or institution which is organized and operated exclusively for, and devoted to the realization of, charitable, scientific, religious, literary, artistic or educational purposes and is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (hereinafter referred to as the "Code").

(v) To solicit, accept and receive, by gift, bequest, devise or benefit of trust, and to hold, own and administer, any property, real, personal, tangible or intangible, wherever located.

(vi) In furtherance of the purposes of the Corporation, to be a member, associate or manager of other non-profit activities, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

(vii) In furtherance of the purposes of the Corporation, to purchase, lease, or otherwise acquire, to hold, and to mortgage, sell or otherwise dispose of or encumber, real and personal property or any share or interest therein,

and to invest, reinvest and deal with the same.

(viii) To borrow money, to make, accept, endorse, execute and issue promissory notes and other obligations for money borrowed, property acquired or services received.

(ix) To make and perform contracts and incur liabilities.

(x) In furtherance of the purposes of the Corporation, to become a member of any committee or other organization.

(xi) To receive and maintain a fund or funds, to have, hold, control, manage, sell and exchange the same, to change the investment thereof, to invest and reinvest the same and the income therefrom, and to apply the income therefrom and the principal thereof to any of the purposes of the Corporation.

(xii) To do all the things permitted by Section 202 of the Not-for-Profit Corporation Law necessary and useful to fulfill and promote its purposes; provided, however, that, notwithstanding any provision of this Certificate of Incorporation or the By-Laws of the Corporation, the Corporation shall not carry on any activities which are not permitted to be carried on by an organization described in Section 501(c)(3) of the Code.

B. Nothing herein contained shall authorize the Corporation,

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directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(b)-(n) and (p)-(s) of the Not-for-Profit Corporation Law.

C. The Corporation shall be considered a Type B Corporation as that term is defined in Section 201 of the Not-for-Profit Corporation Law."

Article III of the Certificate of Incorporation which is to be substituted reads as follows:

"A. The purposes of the Corporation are:

(i) To improve the physical and mental condition of adult blind persons; to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a home for adult blind persons consisting of a skilled nursing facility for those adult blind persons who require the services of licensed professional nurses and a health related facility for those adult blind residents who are unable to live in the community and need an institutional environment; apartment housing for those adult blind persons who can no longer live in the community but do not require services of nurses or an institutional environment; and housing for staff members of these facilities.

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(ii) To establish, operate and maintain community residences and intermediate care facilities for developmentally and mentally disabled multi-handicapped persons, providing program, care services, habilitation, home-like environment and social activities in community based programs for this population, or any combination of such programs.

(iii) To obtain and utilize technical and other resources to assist the Corporation in the achievement of its purposes.

(iv) To promote and assist in coordinating other organizations and agencies, either public or private, to better serve the members of the Corporation and the community.

(v) To render financial assistance to any corporation, community chest, fund, foundation, agency or institution which is organized and operated exclusively for, and devoted to the realization of, charitable, scientific, religious, literary, artistic or educational purposes and is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (hereinafter referred to as the "Code").

(vi) To solicit, accept and receive, by gift, bequest, devise or benefit of trust; and to hold, own and administer, any property, real, personal, tangible or intangible, wherever located.

(vii) In furtherance of the purposes of the Corporation, to be a member, associate or manager of other non-profit activities, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

(viii) In furtherance of the purposes of the Corporation, to purchase, lease, or otherwise acquire, to hold, and to mortgage, sell or otherwise dispose of or encumber, real and personal property or any share or interest therein, and to invest, reinvest and deal with the same.

(ix) To borrow money, to make, accept, endorse, execute and issue promissory notes and other obligations for money borrowed, property acquired or services received.

(x) To make and perform contracts and incur liabilities.

(xi) In furtherance of the purposes of the Corporation, to become a member of any committee or organization.

(xii) To receive and maintain a fund or funds, to have, hold, control, manage, sell and exchange the same, to change the investment thereof, to invest and reinvest the same and the income therefrom, and to apply the income therefrom and the principal thereof to any of the purposes of the Corporation.

(xiii) To do all the things permitted by Section 202 of the Not-for-Profit Corporation Law necessary and useful to fulfill and promote its purposes; provided, however, that, notwithstanding any provisions of this Certificate of Incorporation or the By-laws of the Corporation, the Corporation shall not carry on any activities which are not permitted to be carried on by an organization described in Section 501(c)(3) of the Code.

B. Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(b)-(n) and (p, r & s) of the Not-for-Profit Corporation Law.

C. The Corporation shall be considered a Type B Corporation as that term is defined in Section 201 of the Not-for-Profit Corporation Law."

6. The foregoing amendment to the Certificate of Incorporation was authorized by the unanimous written consent of all of the members of the Corporation entitled to vote thereon dated April 15th, 1982.

7. The Public Health Council and a Justice of the Supreme Court, First Judicial Department, approved, the Commissioner of Health consented to, and the Attorney General waived notice of the filing of the Certificate of Incorporation. The Public Health Council and a Justice of the Supreme Court, First Judicial Department, approved, the Commissioner of Health consented to, and the Attorney General waived notice of the filing of the Certificate of Amendment of the Certificate of Incorporation. The Public Health Council and a Justice of the Supreme Court, First Judicial Department approved, and the Attorney General waived notice of the filing of the Restated Certificate of Incorporation. Before this Certificate of Amendment is delivered to the Department of State, the approval of the Public Health Council, the Commissioner of Mental Retardation and Developmental Disabilities, and of a Justice of the Supreme Court of the State of New York, First Judicial Department, and a waiver of notice by the Attorney General, will be endorsed upon or annexed to this Certificate of Amendment.

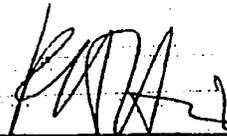
8. The Secretary of State is hereby designated as agent of

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the Corporation upon which process against the Corporation may be served and the post-office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

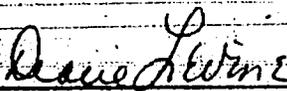
15 West 65th Street
New York, New York 10023

IN WITNESS WHEREOF, we have made and signed this Certificate of Amendment this 15th day of APRIL, 1982, and affirm that the statements made herein are true under the penalties of perjury.



President

ROBERT H. HAINES



Assistant Secretary

DIADÉ LEVINE

ANTHONY MERENDINO
Commissioner of Deeds
City of New York, No. 24817
Certificate Filed in Richmond County
Commission Expires Jan 8, 1984

10
April 15, 1982
Anthony Merendino

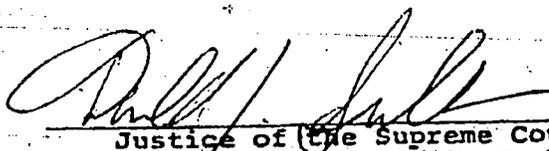
CERTIFICATE OF APPROVAL

I, **DONALD J. SULLIVAN**, the undersigned, a Justice of the Supreme Court of the State of New York in the First Judicial District in which the principal office of J.G.B. HEALTH FACILITIES CORPORATION is located, do hereby approve of the foregoing Certificate of Amendment to the Certificate of Incorporation of J.G.B. HEALTH FACILITIES CORPORATION and the filing thereof.

DATED:

New York, New York

June 29th, 1982



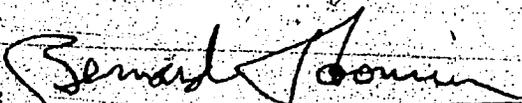
Justice of the Supreme Court
of the State of New York

DONALD J. SULLIVAN

The undersigned has no objection to the approval of the foregoing Certificate of Amendment.

Attorney General of the State of
New York

By:



Assistant Attorney General
of the State of New York

New York, New York

June 23, 1982



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

Theodore B. Liban, Esq.
325 Broadway
Suite 304
New York, New York 10007

Re: Certificate of Amendment of the
Certificate of Incorporation of
J.G.B. Health Facilities Corporation

Dear Mr. Liban:

Pursuant to a review by the staff of the Public Health Council, it has been determined that the above referenced certificate of amendment dated April 15, 1982 neither alters the corporation's purposes relating to activities subject to the Public Health Council's jurisdiction nor changes the corporation's name.

Under § 804(a) of the Not-for-Profit Corporation Law, a certificate of amendment shall not be filed if it adds or changes a purpose which requires Public Health Council approval or changes the corporation's name that had received the Council's approval, unless the Public Health Council's approval is attached to the certificate.

Since the subject certificate of amendment proposes only to add a purpose not subject to the Public Health Council's jurisdiction, its formal approval is not required.

Sincerely,

Shirley M. Parham
Shirley M. Parham
Executive Secretary

COUNCIL

KENNETH O. JOHNSON, M.D.
CHAIRMAN
DON E. BROWN
ROBERT J. COLLINS, M.D.
THOMAS P. DOWLING
MSGR. CHARLES J. FAHEY

JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST
MORTON P. HYMAN
JEANNE E. JONAS
HOWARD J. KESSELER, M.D.
MARY C. MC LAUGHLIN, M.D.

ROBERT H. RANGLES, M.D.
HOWARD A. RUSK, M.D.
KENNETH W. WOODWARD, M.D.
COMMISSIONER OF HEALTH
DAVID AXELROD, M.D.
EX OFFICIO

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STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
ALBANY, NEW YORK

KNOW ALL MEN BY THESE PRESENTS:

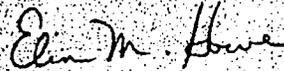
Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and Section 803 of the Not-for-Profit Corporation Law, approval is hereby given to the filing of the annexed Certificate of Amendment dated April 15 of 1982.

J.G.B. HEALTH FACILITIES CORPORATION

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 31 of the Mental Hygiene Law require an Operating Certificate issued by the Office of Mental Retardation and Developmental Disabilities in the Department of Mental Hygiene unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 31 of such law and the regulations promulgated thereunder for the issuance of said Operating Certificate.

IN WITNESS WHEREOF this instrument is executed and the seal of the Department of Mental Hygiene is affixed this 11th day of May, 1982.

ZYGMOND L. SLEZAK
ACTING COMMISSIONER



By ELIN M. HOWE
ASSOCIATE COMMISSIONER
OFFICE OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITIES

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STATE OF NEW YORK
DEPARTMENT OF STATE

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

J. C. B. HEALTH FACILITIES CORPORATION

Under Section 803 of the Not-for-Profit
Corporation Law

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35

10
nd

New
type B

4883219

NSP award 11/8/77 - 1/12/78

10/1/78

not type B

not award is based on this

NY 10/1/78

Quentin Corporation

orig J.C.B. Nursing Home Corporation

11/19/74 - 1/19/75

D-7/2

FILED BY: Ted Liban
325 Broadway
Suite 304
New York, N.Y. 10007

040112

FILED

APR 7 12 45 PM '82



**Division of Corporations,
State Records and
Uniform Commercial Code**

170829000 110
New York State
Department of State
**DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE**
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

**CERTIFICATE OF CHANGE
OF**

J.G.B. Health Facilities Corporation

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

J.G.B. Health Facilities Corporation

If the name of the corporation has been changed, the name under which it was formed is:

J.G.B. Nursing Home Corporation

SECOND: The certificate of incorporation was filed by the Department of State on:

November 14, 1974

THIRD: The change(s) effected hereby are: *(Check appropriate statement(s))*

The county location, within this state, in which the office of the corporation is located, is changed to: _____

The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows:

250 West 64th Street, New York, NY 10023

The corporation hereby: *(Check One)*

Designates _____

as its registered agent upon whom process against the corporation may be served.

The street address of the registered agent is:

Changes the designation of its registered agent to: _____

The street address of the registered agent is:

Changes the address of its registered agent to: _____

Revokes the authority of its registered agent.

FOURTH: The change was authorized by the board of directors.

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X  Mark G. Ackermann
 (Signature) (Name of Signer)
 President
 (Title of Signer)

**CERTIFICATE OF CHANGE
 OF
 J.G.B. Health Facilities Corporation**

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name: J.G.B. Health Facilities Corporation

STATE OF NEW YORK
DEPARTMENT OF STATE

Address: 250 West 64th Street

FILED **AUG 29 2017**

City, State and Zip Code: New York, NY 10023

TAXS
BY: 

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores.
2. The Department of State recommends that all documents be prepared under the guidance of an attorney.
3. The certificate must be submitted with a \$20 filing fee.

For Office Use Only

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